

**Telecommunications Act
(TKG)
of 23 June 2021
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Part 1 **General provisions**

Section 1 **Purpose and scope of the Act**

(1) The purpose of this Act is, by means of technology-neutral regulation, to promote competition in the area of telecommunications and efficient telecommunications infrastructure and to ensure appropriate and adequate services nationwide.

(2) All undertakings or persons operating telecommunications networks or telecommunications systems or providing telecommunications services within the area of validity of this Act are subject to this Act, as are the other parties who are entitled and obligated under this Act.

Section 2 **Regulatory aims and principles**

(1) Telecommunications regulation is a sovereign task of the Federation.

(2) The aims of the regulation are

1. to ensure connectivity and to promote access to and the use of very high capacity networks by all citizens and undertakings,
2. to safeguard competition based on equal opportunities and to promote sustainable competitive telecommunications markets in the field of telecommunications services and networks – including efficient infrastructure-based competition – as well as the associated facilities and services, also in rural areas,
3. to uphold the interests of the users, and in particular of the consumers, in the field of telecommunications; the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur) and other competent authorities under this Act promote the interests of the users by
 - a) ensuring connectivity, widespread availability and the accelerated expansion of very high capacity networks and of telecommunications services and promoting their use,
 - b) working towards the greatest possible advantages for the users with regard to choice, prices and quality on the basis of effective competition,
 - c) upholding the interests of public safety/security and safeguarding the security of the networks and services,
 - d) safeguarding equivalent standards of living in urban and rural areas and a high level of protection for the end-users and giving consideration to the needs – such as for example affordable prices – of certain groups in society, particularly of end-users with disabilities, older end-users and end-users with special social

- needs, and the choice available to and equivalent access for end-users with disabilities,
- e) ensuring that no distortions or restraints of competition exist in the field of telecommunications,
4. to promote the development of the internal market of the European Union through the efforts of the Bundesnetzagentur and other competent authorities under this Act to help remove remaining barriers to investment in telecommunications networks, telecommunications services, associated facilities and associated services and for their provision in the entire European Union and to facilitate the creation of converging conditions for this, to develop common rules and predictable regulatory concepts and also to promote open innovation, the establishment and development of transeuropean networks, the provision, availability and interoperability of pan-European services and end-to-end connectivity,
 5. to ensure efficient and undisrupted use of spectrum, also taking the interests of broadcasting into consideration.
- (3) In pursuing the aims stipulated in subsection (2), the Bundesnetzagentur and other competent authorities under this Act apply objective, transparent, non-discriminatory and proportionate regulatory principles by, amongst other things,
1. promoting the predictability of regulation by upholding a uniform regulatory concept across appropriate review periods and via cooperation amongst one another, with BEREC, with the Radio Spectrum Policy Group and with the Commission,
 2. ensuring that operators of telecommunications networks and providers of telecommunications services are not discriminated against in comparable circumstances,
 3. applying Union law in a technology-neutral manner to the extent that this is compatible with the fulfilment of the aims under subsection (2),
 4. also promoting efficient investment and innovation in the field of new and improved infrastructure by ensuring that appropriate consideration is given to the risk of the investing undertaking in the case of each access obligation and by permitting various commercial agreements to diversify the risk of investment amongst investors and between investors and parties demanding access, whilst at the same time ensuring that competition on the market and the principle of non-discrimination are upheld,
 5. giving appropriate consideration to the many different conditions relating to infrastructure, competition, the circumstances of the end-users and in particular of the consumers which exist in the various geographical areas within the Federal Republic of Germany and
 6. only imposing advance regulatory obligations when there is no effective and sustainable competition in the interest of the end-users and ensuring that these obligations are relaxed or revoked as soon as such competition exists.
- (4) The provisions of the Act against Restraints of Competition remain applicable to the extent that explicitly exhaustive rules are made by this Act. This is without prejudice to the tasks and responsibilities of the cartel authorities.
- (5) This is without prejudice to the sovereign rights of the Federal Ministry of Defence.
- (6) Consideration must be given to the interests of the authorities and organisations with security tasks of the Federation and of the Länder, also the interests of the Federal Armed Forces in line with this Act.
- (7) Consideration must be given to the interests of broadcasting and comparable telemedia irrespective of the mode of transmission. This is without prejudice to the stipulations of the Länder under media legislation.

Section 3

Terms and definitions

For the purposes of this Act

1. “provider of telecommunications services” means anyone who provides telecommunications services;
2. “call” means a connection established by means of a publicly available interpersonal telecommunications service allowing two-party or multi-party voice communication;

3. “access identifier” means a telephone number or other unambiguous and unique character string which is assigned to the specific access holder on a permanent basis and identifies telecommunication via the respective access uniquely and consistently;
4. “application programming interface” (“API”) means the software interface between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television receivers for digital television and radio broadcast services;
5. “directory enquiry services” means services accessible by telephone at any time across the country, in particular those starting with 118, the sole purpose of which is to pass on the telephone number, name, address and additional details of end-users; onward connection to the requested end-user or service can be part of the directory enquiry service;
6. “customer data” means the data of an end-user necessary for the purpose of establishing, framing the contents of, modifying or terminating a contract for telecommunications services;
7. “operator” means an undertaking providing or authorised to provide a public telecommunications network or an associated facility;
8. “carrier selection” means access by an end-user to the services of all directly interconnected providers of publicly available number-based interpersonal telecommunications services on a call by call basis by dialling a carrier selection code;
9. “carrier preselection” means access by an end-user to the services of all directly interconnected providers of publicly available number-based interpersonal telecommunications services by means of a preselected choice, with the end-user being able to make different preselections for local and long-distance calls and override any preselected choice on a call by call basis by dialling a code;
10. “digital television receiver” means a television set with an integrated digital decoder or a digital decoder designed for connection to a television set for the use of digitally transmitted television signals which can be enriched with additional signals, including conditional access;
11. “wireless broadband networks and services” means wireless telecommunications networks and services capable of delivering broadband;
12. “small-area wireless access point” means low-power wireless network access equipment of a small size operating within a small range, using licensed radio spectrum or licence-exempt radio spectrum or a combination thereof, which may be used as part of a telecommunications network, which may be equipped with one or more low visual impact antennae, and which allows wireless access by users to telecommunications networks regardless of the underlying network topology, be it mobile or fixed;
13. “end-user” means a user neither operating public telecommunications networks nor providing publicly available telecommunications services;
14. “spectrum assignment” means authorisation given by a public authority or by legal provisions to use particular spectrum under specified conditions;
15. “spectrum usage” means any deliberate emission or radiation of electromagnetic waves between 8.3 kHz and 3000 GHz for use by radio communications services or other applications of electromagnetic waves;
16. “spectrum allocation” means the designation of a given frequency band for use by one or more radio communications services or by other applications of electromagnetic waves, where necessary with further specifications;
17. “harmful interference” means interference which endangers the functioning of a radio navigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable international law, with European Union law or with the provisions of this or any other Act;
18. “spectrum sharing” means access by two or more users to use the same frequency bands under a defined sharing arrangement, authorised on the basis of a general assignment, an individual assignment or a combination thereof, including regulatory approaches such as assigned shared access aiming to facilitate the shared use of a frequency band, subject to a binding agreement of all parties involved, in accordance with sharing rules as included in their spectrum usage rights in order to guarantee all users predictable and reliable sharing arrangements,
19. “equipment” means radio equipment, telecommunications terminal equipment or a combination of both;
20. “BEREC” means the Body of European Regulators for Electronic Communications;

21. “Radio Spectrum Policy Group” means the advisory group on radio spectrum policy in accordance with Commission Decision C/2019/4147 of 11 June 2019 setting up a Radio Spectrum Policy Group and repealing Decision 2002/622/EC (OJ C 196, 12 June 2019, p. 16);
22. “harmonised spectrum” means spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24 April 2002, p. 1);
23. “internet access service” means an internet access service as defined in Article 2 point 2 of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communication and amending Directive 2002/22/EC and Regulation (EU) 531/2012 (OJ L 310 of 26 November 2015, p. 1) as last amended by Regulation (EU) 2018/1971 (OJ L 321 of 17 December 2018 p. 1);
24. “interpersonal telecommunications service” means a service normally provided for remuneration which enables direct interpersonal and interactive exchange of information via telecommunications networks between a finite number of persons, whereby the persons initiating or participating in the telecommunication determine its recipient(s), and does not include services which enable interpersonal and interactive telecommunication merely as a minor ancillary feature that is intrinsically linked to another service;
25. “identifier” means an unambiguous character string that is assigned to a user, to an access or to terminal equipment, which enables the unambiguous identification of the user, the access or the terminal equipment;
26. “short code data services” means short code services that are used to transmit non-voice content by means of telecommunications and that are not telemedia;
27. “short code services” means services with the characteristics of a premium rate service but using a special type of number composed of a short code;
28. “short code voice services” means short code services in which communication is voice-based;
29. “mass calling services” means services, in particular those starting with (0)137, that are characterised by high volumes of short calls, during one or more brief intervals, to a destination with limited handling capacity;
30. “sustainable competitive market” means a market in which competition is secured such that it prevails without sector-specific regulation;
31. “national subscriber numbers” means telephone numbers, in particular those starting with (0)32, that are used for services enabling access to public telecommunications networks and that are not tied to a specific location;
32. “network termination point” means the physical point at which an end-user is provided with access to a public telecommunications network; in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to an end-user’s number or name;
33. “very high capacity network” means a telecommunications network which either consists wholly of optical fibre elements at least up to the distribution point at the serving location or is capable of delivering under usual peak-time conditions similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the telecommunications network ultimately connects with the network termination point;
34. “numbers” means character strings that in telecommunications networks serve the purpose of addressing;
35. “type of number” means all the numbers in a numbering space for a particular service or for particular technical addressing;
36. “numbering range” means part of the numbering space provided for a particular type of number;
37. “number-based interpersonal telecommunications service” means an interpersonal telecommunications service which connects with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which enables telecommunication with a number or numbers in national or international numbering plans;
38. “numbering space” means all the numbers used for a particular type of addressing;
39. “sub-range” means part of a numbering range;

40. “number-independent interpersonal telecommunications service” means an interpersonal telecommunications service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable telecommunication with a number or numbers in national or international numbering plans;
41. “user” means a natural or legal person using or requesting a publicly available telecommunications service for private or business purposes;
42. “public telecommunications network” means a telecommunications network used wholly or mainly for the provision of publicly available telecommunications services which support the transfer of information between network termination points;
43. “public supply networks” means nascent, operated or disused physical infrastructure for the public provision of:
- a) production, transport or distribution services for
 - aa) telecommunications,
 - bb) gas,
 - cc) electricity, including electricity for public street lighting,
 - dd) district heating or
 - ee) water, except for drinking water within the meaning of section 3(1) of the Drinking Water Ordinance as published on 10 March 2016 (Federal Law Gazette I p. 459), as last amended by Article 99 of the Ordinance of 19 June 2020 (Federal Law Gazette I p. 1328); the public supply networks also include the physical infrastructure for the disposal or treatment of waste water and sewage and drainage systems;
 - b) transport services, in particular rail networks, roads, waterways, bridges, ports and airports;
44. “publicly available telecommunications services” means telecommunications services made available to a non-defined group of persons;
45. “passive network infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network; this includes, for example, elements such as pipes, conduits and ducts, cable ducting, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations and supporting constructions such as towers, traffic lights and street lights, masts and poles; cables, including dark fibre, are not physical infrastructure within the meaning of this Act;
46. “personal number” means telephone numbers, in particular those starting with (0)700, that provide access to and from every telecommunications network on one number, irrespective of the location, terminal equipment, transmission mode or technology;
47. “premium rate services” means services, in particular those starting with (0)900, that offer a service in addition to the telecommunications service, which is charged to the caller along with the telecommunications service and which cannot be placed with another type of number;
48. “roaming” means the enabling of a mobile network operator to use the mobile networks of other operators for its end-users in areas outside its coverage area;
49. “telephone number” means a number in the numbering space for the public telecommunications network or in a numbering space for short code services;
50. “telephone numbering range” means part of the numbering space for the public telecommunications network or part of the numbering space for short code services that is provided for a particular type of number;
51. “medium rate services” means services, in particular those starting with (0)180, for which the same rate is charged across the country;
52. “security of networks and services” means the ability of telecommunications networks and services to resist, at a given level of confidence, any action that compromises the availability, authenticity, integrity or confidentiality of those networks and services, of stored or transmitted or processed data, or of the related services offered by, or accessible via, those telecommunications networks or services;
53. “security incident” means an event having an actual adverse effect on the security of telecommunications networks or services;

54. “other physical infrastructure” means nascent, operated or disused physical infrastructure including property and any buildings situated on the property of public sector bodies or other physical infrastructure under their control, which in technical terms is suitable for establishing small-area wireless access points or is necessary for connecting such access points and where the right to setting up or shutting down or operating other physical infrastructure is derived or awarded by the public sector body; this infrastructure includes in particular street furniture, public street lighting, traffic signs, traffic lights, advertising billboards and pillars, bus and tram stops, and underground stations;
55. “voice communications service” means a publicly available telecommunications service for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international numbering plan;
56. “location data” means any data processed in a telecommunications network or by a telecommunications service that indicates the position of the terminal equipment of a user of a publicly available telecommunications service;
57. “sub-loop” means a partial local loop connecting the network termination point at the end-user’s location to a concentration point or a specified intermediate access point in the fixed public network;
58. “local loop” means the physical path used by signals connecting the network termination point to a distribution frame or equivalent facility in the fixed public telecommunications network;
59. “telecommunications” means the technical process of sending, transmitting and receiving signals by means of telecommunications systems;
60. “telecommunications systems” means technical facilities, systems or servers, capable of sending, transmitting, switching, receiving, steering or controlling electromagnetic or optical signals or data identifiable as messages within the provision of telecommunications services;
61. “telecommunications services” means a service generally provided for remuneration via telecommunications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using telecommunications networks, the following types of services:
 - a) internet access services;
 - b) interpersonal telecommunications services and
 - c) services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting;
62. “telecommunications terminal equipment” means equipment directly or indirectly connected to the interface of a public telecommunications network to send, process or receive information or data; in either case (direct or indirect), the connection may be made by electrically conductive wire, optical fibre or electromagnetically for both direct and indirect connections; a connection is indirect if equipment is placed between the telecommunications terminal equipment and the interface of a public telecommunications network;
63. “telecommunications-based services” means services which do not invoke a service delivered in a different place or at a different time but whose content service is provided in the course of the telecommunications connection;
64. “telecommunications lines” means underground or overhead telecommunications cable systems, including the associated switching and distribution equipment, masts and supports, cable chambers and ducts, as well as other technical equipment required to provide publicly available telecommunications services;
65. “telecommunications network” means transmission systems in their entirety whether or not based on permanent infrastructure or centralised administration capacity and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by cable, radio, optical or other electromagnetic means, including satellite networks, fixed circuit- and packet-switched networks, including the internet, and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
66. “duplication” means the subsequent doubling of telecommunications infrastructure by setting up parallel structures by which the same coverage area is to be served;
67. “transmission path” means telecommunications systems in the form of cable or wireless links with the associated transmission equipment, as point-to-point or point-to-multipoint links with a given information throughput (bandwidth or bit rate), including their network terminations;
68. “major renovation works” means building or civil engineering works at the end-user’s location encompassing

structural modifications of the entire in-building physical telecommunications infrastructure or a significant part thereof;

69. “undertaking” means an undertaking itself or any affiliated undertakings within the meaning of section 36 (2) of the Act against Restraints of Competition or any merged undertakings within the meaning of section 37 (1) of the Act against Restraints of Competition, whether or not the affiliated or merged undertaking was established at the time of the imposition of obligations under this Act;
70. “traffic data” means data whose collection, processing or use is necessary in the provision of a telecommunications service;
71. “personal data breach” means a breach of data security leading to the loss, unlawful deletion, alteration, storage, disclosure or other unlawful use of personal data and unlawful access to such data;
72. “full unbundled access to the local loop” means the provision of access to the local loop and sub-loop allowing the use of the full capacity of the telecommunications network infrastructure;
73. “call queue” means any arrangement or business practice used by a telecommunications service user by which calls are taken or held without the caller’s business being attended to; this covers the period from the time the call is set up from the caller’s line to the time the caller’s business is first attended to, irrespective of whether this is done by means of automated dialogue, by preselection or by personal handling; automated dialogue or a preselection begins as soon as information needed to attend to the caller’s business is requested by an automated system; personal handling of the caller’s business begins as soon as a human agent takes and attends to the call; this also includes requesting information needed to attend to the caller’s business; deemed to be a call queue is also, where a call is passed on, the period between one agent or system finishing attending to the caller’s business and the next agent or system beginning to attend to the business, without the call being technically interrupted; not deemed to be a call queue are automatic recorded messages where it is clear to the caller prior to connection that the service consists solely of a recorded message;
74. “access” means the making available of facilities or services to another undertaking, under defined conditions, for the purpose of providing telecommunications services, including when they are used for the delivery of information society services or broadcast content services; it covers, inter alia:
- a) access to network elements, including network elements which are not active, and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means; in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop, including access for the purpose of connecting a user and enabling a change of provider by a user, and to information and data necessary for this, and for the purpose of fault clearance;
 - b) access to physical infrastructure including buildings, ducts and masts;
 - c) access to relevant software systems including operational support systems;
 - d) access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing;
 - e) access to number translation or systems offering equivalent functionality;
 - f) access to fixed and mobile networks;
 - g) access to conditional access systems for digital television services, and
 - h) access to virtual telecommunication network services;
75. “conditional access systems” means technical procedures or arrangements whereby the authorised use of protected broadcasting programmes is made conditional upon subscription or an individual authorisation;
76. “access point to in-building physical network elements” means a physical point, located inside or outside the building, accessible to the owners and operators of public telecommunications networks, where connection to the in-building physical infrastructure for very high capacity networks is made available;
77. “associated services” means a service associated with a telecommunications network or a telecommunications service which enables or supports the provision, self-provision or automated provision of services via that network or service, or has the potential to do so, and includes, inter alia, number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence service;
78. “associated facilities” means those associated services, physical infrastructures and other facilities or elements

associated with a telecommunications network or a telecommunications service which enable and/or support the provision of services via that network or service or have the potential to do so; these include, inter alia, buildings, entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

79. “interconnection” means a specific type of access implemented between public telecommunications network operators by means of the physical and logical linking of public telecommunications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking where such services are provided by the parties involved or other parties who have access to the network.

Section 4

International reporting requirements

The operators of public telecommunications networks and the providers of publicly available telecommunications services must provide the Bundesnetzagentur and, to the extent necessary to fulfil their tasks, other competent authorities on demand with the information these need to comply with reporting requirements to the Commission and other international bodies.

Section 5

Registration requirement

(1) Anyone who operates public telecommunications networks on a commercial basis or provides publicly available telecommunications services on a commercial basis which are not number-independent interpersonal telecommunications services must register the intended commencement, alteration and end of the activity and changes to the name or the undertaking, the legal form and the address to the Bundesnetzagentur without delay. The registration must take place in writing or electronically.

(2) The registration is undertaken using a form prescribed and published by the Bundesnetzagentur.

(3) On request, the Bundesnetzagentur confirms the completeness of the registration under subsection (2) within a week and certifies that the undertaking enjoys the rights granted by or on the basis of this Act.

(4) The Bundesnetzagentur regularly publishes a list of the registered undertakings on its website including a brief description of the registered activity.

(5) If the cessation of business activity by the undertaking has clearly taken place and the ending of the activity has not been registered with the Bundesnetzagentur within six months, the Bundesnetzagentur can determine the ending of the activity ex officio.

(6) The Bundesnetzagentur transmits the data from the forms received under subsection (2) to BEREC electronically.

Section 6

Annual financial report

(1) Undertakings which

1. operate public telecommunications networks or provide publicly available telecommunications services,
2. are not obliged by provisions of commercial law to disclose an annual financial statement and
3. are to be regarded as large if section 267 (3) to (5) of the Commercial Code is applied accordingly,

must produce an annual financial report and disclose it in line with the Fourth Subdivision of the Second Division of the

Third Book of the Commercial Code; sections 326 and 327 of the Commercial Code are not applied accordingly.

(2) The annual financial report must at least contain:

1. an annual financial statement drawn up in line with subsection (3) and audited by an auditor in line with subsection (4),
2. a situation report drawn up in line with subsection (3) and audited by an auditor in line with subsection (4) and
3. the auditor's positive or negative audit report.

(3) The annual financial statement and the situation report by an undertaking under subsection (1) must be drawn up in line with the provisions of the First Subdivision of the Second Division of the Third Book of the Commercial Code; section 264 (3) and section 264b of the Commercial Code are to this extent not applied accordingly. If the undertaking under subsection (1) is a commercial partnership or the undertaking of a sole trader, the other assets of the partners or the sole trader (private assets) must not be included in the accounts and the expenses and revenues accruing to the private assets must not be included in the profit-and-loss account.

(4) The annual financial statement and the situation report by an undertaking under subsection (1) must be audited by an auditor in line with the Third Subdivision of the Second Division of the Third Book of the Commercial Code. Section 324 of the Commercial Code is applied accordingly.

Section 7

Structural separation and separate accounting

(1) Undertakings which operate public telecommunications networks or provide publicly available telecommunications services and possess special or exclusive rights to provide services in other sectors within the European Union are obliged:

1. to structurally unbundle activities relating to the provision of public telecommunications networks and the provision of publicly available telecommunications services or
2. to maintain separate accounts on the activities relating to the provision of public telecommunications networks and the provision of publicly available telecommunications services to the extent that would be necessary if they were delivered by legally independent undertakings.

(2) In the case of subsection (1) no. 2, the undertaking must draw up a balance sheet statement and a profit-and-loss account (activity report) in line with the provisions of the First Subdivision of the Second Division of the Third Book of the Commercial Code for the activities cited in subsection (1) no. 2; section 264 (3) and section 264b of the Commercial Code are to this extent not applied accordingly. The activity report must cite the rules, including the calculation principles by which the assets and debts and expenditures and yields are assigned to the activities. The fixed assets must be set out in detail. The structure-related costs must be cited. The activity report must be audited by an auditor in line with the Third Subdivision of the Second Division of the Third Book of the Commercial Code. The undertaking must disclose an activity report and a positive or negative auditor's report in line with the Fourth Subdivision of the Second Division of the Third Book of the Commercial Code.

(3) The obligations under subsections (1) and (2) do not apply to undertakings whose sales revenues from the provision of public telecommunications networks or the provision of publicly available telecommunications services in the European Union amounted to less than 50,000,000 euros in the last twelve months before the final balance sheet day.

Section 8

Provisions on coercive fines

(1) The provisions on coercive fines of sections 335 to 335b of the Commercial Code are applied accordingly to the violation of obligations to disclose the annual financial report under section 6 (1) or the activity report under section 7 (2) sentence 6. The coercive fine procedure can be carried out

1. in the case of a legal person against the legal person or the members of the authorised representative body;
2. in the case of a commercial partnership within the meaning of section 264a (1) of the Commercial Code against the commercial partnership or against the persons named in section 355b sentence 2 of the Commercial Code;
3. in the case of a commercial partnership not cited in no. 2, against the commercial partnership or the shareholders authorised to represent it;
4. in the case of an undertaking operated in the legal form of a sole trader, against the owner or his or her statutory representative.

Section 329 of the Commercial Code is applied accordingly.

(2) The Bundesnetzagentur transmits to the operator of the Federal Gazette once each calendar year the name and address of the undertakings which become known to it which

1. are obliged to disclose an annual financial report under section 6 (1);
2. are obliged to disclose an activity report under section 7 (2) sentence 6.

Section 9

International status

(1) Undertakings which provide international telecommunications services or operate radio equipment as part of their service which can cause harmful interference to radio services of other countries are recognised operating agencies within the meaning of the Constitution and the Convention of the International Telecommunication Union. These undertakings are subject to the obligations which derive from the Constitution of the International Telecommunication Union.

(2) Undertakings which provide international telecommunications services must in line with the rules of the Constitution of the International Telecommunication Union

1. give absolute priority to all telecommunications concerning safety of life at sea, on land, in the air or in outer space, as well as to epidemiological telecommunications of exceptional urgency of the World Health Organization,
2. give precedence to state telecommunications connections to the extent possible over other telecommunications traffic if this is expressly demanded by the person registering the connection.

Part 2

Market regulation

Division 1

Market regulation procedures

Section 10

Market definition

(1) The Bundesnetzagentur determines within the framework of its discretionary scope, taking account of the aims and principles of section 2 and the principles of general competition law, the materially and spatially relevant telecommunications markets which can be considered for regulation under this Division.

(2) When determining markets under subsection (1), the Bundesnetzagentur takes utmost account of the following publications by the Commission, each in its current version:

1. 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 (OJ L 439 of 29 December 2020, p. 23) and
2. the guidelines on market analysis and the assessment of significant market power under Article 64 (2) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321 of 17 December 2018, p. 36).

When determining spatially relevant markets, the Bundesnetzagentur gives consideration not least to the intensity of competition on infrastructure in these areas. It can give consideration to the information gathered under sections 79 to 83.

(3) Where BEREC determines cross-border demand under Article 66 (2) of Directive (EU) 2018/1972, the Bundesnetzagentur takes utmost account of the Guidelines on common approaches for national regulatory authorities to meet the identified transnational demand.

Section 11

Market analysis

(1) In the case of the markets determined under section 10 (1), the Bundesnetzagentur examines in the context of the market analysis whether these come into consideration for regulation under this Part under subsection (2) (Three Criteria Test). To the extent that this is the case, it examines whether the imposition of obligations due to the determination that one or several undertakings has or have significant market power under subsection (4) can be justified.

(2) For regulation within the meaning of subsection (1) sentence 1, those markets determined under section 10 (1) come into consideration

1. which are characterised by significant and enduring structural, legal or regulatory market access barriers,
2. whose structures do not tend towards effective competition in view of the competition on infrastructure and the other competition within the relevant time period and
3. on which the application of generation competition law is not sufficient on its own adequately to counter the determined market failure.

(3) When examining the need to regulate a market under subsection (2), the Bundesnetzagentur takes into consideration the developments which would be expected without regulation of the market under consideration in line with the provisions of this Division; it particularly considers

1. market developments which influence the likelihood that the relevant market will tend towards effective competition,
2. all relevant constraints of competition at wholesale and retail level irrespective of whether it is assumed that the source of such constraints derives from telecommunications networks and services or other types of services or applications which are comparable from the end-user's point of view and irrespective of whether such constraints are part of the relevant market,
3. other types of regulation or of measures which have been imposed and which impact the relevant market or related retail markets in the period in question, and
4. regulation of other relevant markets based on a market analysis.

(4) Where a market comes into consideration for regulation under the Three Criteria Test in line with this Part, the

Bundesnetzagentur examines whether and which undertakings dispose of significant market power on this market. An undertaking is regarded as an undertaking with significant market power if either alone or together with others it assumes a position equivalent to dominance, i.e. a commercially strong position which allows it to conduct itself to a considerable extent independently of competitors, customers and end-users.

(5) If an undertaking disposes of significant market power on a relevant market, it can also be categorised as an undertaking with significant market power on a neighbouring market under consideration for regulation if the links between the two markets allow it to transfer market power from the relevant market to the neighbouring market and thus to strengthen the undertaking's overall market power.

(6) In the case of cross-border markets covered by Directive (EU) 2018/1972, the Bundesnetzagentur investigates, jointly with the national regulatory authorities of the other Member States of the European Union which include these markets, whether significant market power exists within the meaning of subsection (4).

(7) In the context of the market analysis, the Bundesnetzagentur takes utmost account of the publications of the Commission cited in section 10 (2) sentence 1 in their current version.

Section 12

Consultation and consolidation procedures

(1) The Bundesnetzagentur gives the interested parties opportunity to comment on the draft results of the market definition under section 10 and the market analysis under section 11 within an appropriate period, which should usually be one month. The draft and the comments received are published by the Bundesnetzagentur with the participants' operational and commercial confidentiality being maintained. For this purpose, the Bundesnetzagentur maintains a single information point which keeps a list of all the ongoing consultations.

(2) To the extent that measures intended under sections 10 and 11 would impact on trade between the Member States of the European Union, following the holding of the consultation procedure the Bundesnetzagentur transmits the draft of the measures simultaneously to the Commission, BEREC and the national regulatory authorities of the other Member States of the European Union unless a recommendation or guidelines issued by the Commission under Article 34 of Directive (EU) 2018/1972 provide for an exemption from the obligation to transmit the information. Section 199 (3) and (4) applies accordingly. Before the expiry of one month following transmission to the Commission, the Bundesnetzagentur must not determine measures intended under sections 10 and 11.

(3) The Bundesnetzagentur must take utmost account of the comments from the Commission, BEREC and the other national regulatory authorities submitted within the month's deadline cited in subsection (2) sentence 3.

(4) If the Commission states within the month's deadline under subsection (2) sentence 3 that

1. it has serious doubts about the compatibility of the measures intended under sections 10 and 11 with the law of the European Union and particularly with the aims of Article 3 of Directive (EU) 2018/1972 or
2. these measures create a barrier to the internal market,

the Bundesnetzagentur will not determine these measures before the end of two further months after the communication from the Commission if they contain the following:

1. the determination of a relevant market which differs from those markets defined in the current version of Recommendation (EU) 2020/2245, or
2. the determination that one or several undertakings has or have significant market power on a market.

(5) If the Commission calls on the Bundesnetzagentur within the two-month period cited in subsection (4) to withdraw the draft of the measures intended under sections 10 and 11, the Bundesnetzagentur will alter the draft within six months of the date of the Commission decision or inform the Commission within these six months that it is withdrawing the draft. If the Bundesnetzagentur alters the draft of the intended measure, it will hold the consultation procedure under subsection (1) and present to the Commission the altered draft under subsection (2). The Bundesnetzagentur informs the Federal Ministry for Economic Affairs and Energy and the Federal Ministry of Transport and Digital Infrastructure about the Commission's decision and its next steps under sentence 1.

(6) Without delay after the Commission has commented, the Bundesnetzagentur will publish the results of the market definition under section 10 and the market analysis under section 11 whilst maintaining the participants' operational and commercial secrets and will transmit these to the Commission and BEREC. Section 199 (3) and (4) applies accordingly. If the procedure under subsections (2) to (5) is not applied, the Bundesnetzagentur will normally publish the results of the market definition under section 10 and the market analysis under section 11 within a month after the end of the deadline for comments under subsection (1) sentence 1, taking account of the comments received.

(7) The Bundesnetzagentur can adopt appropriate provisional measures if, in the event of extraordinary circumstances, it is of the view that action must be taken urgently without compliance with the procedure under subsections (1) to (5) in order to ensure competition and to protect the interests of the users. It informs the Commission, BEREC and the other national regulatory authorities of this without delay following the adoption of the measures, providing a full justification. Subsections (1) to (5) apply to a decision by the Bundesnetzagentur to make these measures permanent or to extend their period of validity.

(8) The Bundesnetzagentur can withdraw the draft of a market definition and market analysis under sections 10 and 11 at any time.

Section 13 **Regulatory order**

(1) The Bundesnetzagentur imposes obligations under sections 24 to 30, 38 or 49, alters existing obligations or retains them on undertakings which dispose of significant market power if it is of the opinion that the market outcome for the end-users would not represent effective competition without these obligations.

(2) The Bundesnetzagentur can revoke obligations that have been imposed. The revocation must be announced to the affected undertakings with an appropriate period of notice. The period of notice must be set such that an orderly transition to the situation without the relevant obligations which is triggered by the revocation can be ensured for the beneficiaries of the obligations and the end-users. When the period of notice is set, consideration must be given to the conditions and deadlines of existing agreements on access.

(3) When imposing, altering, retaining or revoking obligations under subsections (1) and (2) (regulatory order), the Bundesnetzagentur ensures that the obligations

1. correspond to the nature of the problem determined on the relevant market, if appropriate taking account of cross-border demand determined by BEREC under Article 66 of Directive (EU) 2018/1972,
2. are appropriate, particularly in view of the costs and the benefits of the obligations and
3. are justified in view of the aims of section 2.

(4) The Bundesnetzagentur gives consideration in the regulatory order to commitments which have been declared binding under section 19. Regarding the proportionality of the obligation imposed in accordance with subsection (3) with regard to the commitments, it takes account in particular

1. of the evidence of the fair and appropriate nature of the commitments,
2. of the openness of the commitments to all market participants,
3. of the timely availability of the access at fair, appropriate and non-discriminatory conditions, including the equivalence of access under section 24 (2), also to very high capacity networks, in advance of the introduction of corresponding retail services, and
4. the general appropriateness of the commitments in order to permit effective and sustainable competition on downstream markets and to facilitate the cooperation-based construction and the use of very high capacity networks in the interest of the end-users.

If commitments which are declared binding refer to an offer of coinvestment under section 18 (1) sentence 1 no. 2, and at least one coinvestor accepts the offer, the Bundesnetzagentur will dispense with the imposition of obligations under subsection (1) for the network elements covered by the commitment and will revoke under subsection (2) any such existing obligations. In derogation of sentence 3, the Bundesnetzagentur can impose, alter or retain obligations under subsection (1) if

it finds that due to the special characteristics of the market under consideration, it would not have been possible to remedy with other means the problem with competition that has been determined.

(5) In the case of section 11 (5), obligations under subsection (1) can only be undertaken on the neighbouring market in order to prevent the transfer of market power.

(6) In the case of section 11 (6), the Bundesnetzagentur agrees in consensus with the affected national regulatory authorities which obligations the undertaking or undertakings with significant market power needs or need to fulfil.

(7) The decisions to impose, alter and retain the obligations under subsection (1) or to revoke them under subsection (2) are taken as a uniform administrative decision with the measures under sections 10 and 11.

Section 14

Regulatory order procedure

(1) The Bundesnetzagentur presents a draft regulatory order usually within six months following the publication of the results of the market definition and market analysis.

(2) To the extent that the intended obligations in the regulatory order would have significant effects on the market in question, the consultation procedure under section 12 (1) and the procedure to adopt provisional measures under section 12 (7) apply accordingly.

(3) The consolidation procedure under section 12 (2), (3) and (6) applies accordingly to the extent that the intended obligations of the regulatory order would impact trade between the Member States of the European Union and no exception exists in a recommendation or guidelines issued by the Commission under Article 34 of Directive (EU) 2018/1972. The Bundesnetzagentur presents the decision declaring that commitments are binding to the Commission in the consolidation process along with the draft regulatory order. If the Bundesnetzagentur intends to impose obligations under sections 31 and 32, it will not launch the procedure under subsections (1) and (2) until the Commission has permitted the adoption of these obligations in response to a corresponding application in the procedure under Article 118 (3) of Directive (EU) 2018/1972. The Bundesnetzagentur can carry out the procedure under subsections (1) and (2) together with or following the procedure under section 12.

(4) If the Commission issues a decision within the period of a month under section 12 (2) sentence 3 to the Bundesnetzagentur and BEREC stating why it is of the opinion that the draft of the regulatory order which does not merely contain the retention of an obligation represents a barrier to the internal market or why it has considerable doubts about its compatibility with the law of the European Union, the Bundesnetzagentur will not stipulate intended obligations before the end of three further months.

(5) Within the three-month period under subsection (4) the Bundesnetzagentur works closely with the Commission and BEREC to identify the most suitable and effective measure with regard to the aims of section 2. In this process, it takes account of the views of the market participants and the need to develop a uniform regulatory approach.

(6) If BEREC provides comments on the Commission's communication within six weeks from the beginning of the three-month period under subsection (4) in which it shares the Commission's serious concerns, the Bundesnetzagentur can alter the draft regulatory order before the expiry of the three-month period under subsection (4) taking account of the Commission's communication and BEREC's comments and thus make the altered draft measures the subject of the Commission's continuing examination.

(7) After the end of the three-month period under subsection (4), the Bundesnetzagentur gives the Commission the opportunity to make a recommendation within a further month. If the Commission calls on the Bundesnetzagentur in the case of subsection (6) within the one-month period under sentence 1 to withdraw an intended obligation under section 13 (4) sentence 3 and 4 or section 22 (1), the procedure under section 12 (5) applies accordingly.

(8) After the end of the one-month period under subsection (7) sentence 1, the Bundesnetzagentur transmits the regulatory order to the Commission and BEREC or it informs them that it has withdrawn the draft of the regulatory order. If the Bundesnetzagentur does not follow the Commission's recommendation, it provides a justification for this. If a consultation procedure under section 12 (1) is again to be held under subsection (1) or section 16, the period under sentence 1 is extended accordingly.

(9) The Bundesnetzagentur can withdraw the draft of a regulatory order under section 13 at any time.

Section 15

Review of market definition, market analysis and regulatory order

(1) If the Bundesnetzagentur becomes or is made aware of facts, it examines within six weeks whether these facts justify the assumption that the results of market definition and market analysis under sections 10 and 11 no longer correspond to the actual market circumstances and the results need to be reviewed. Sections 10 to 14 apply accordingly in the case of a review of the results of sections 10 and 11.

(2) If the Bundesnetzagentur determines within the six-week period under subsection (1) sentence 1 that

1. the facts under subsection (1) are not significant enough to necessitate a new market definition and market analysis and
2. the obligations imposed on the undertaking with significant market power no longer correspond to the conditions cited in section 13 (1),

it can alter or revoke existing obligations in the procedure under section 14 or impose new obligations. Sentence 1 applies in particular if the undertaking with significant market power has presented commitments under section 19 (1) which have been declared binding, or if the Bundesnetzagentur determines under section 19 (6) that the undertaking has not complied with the commitments which have been declared binding.

(3) Apart from in the cases of subsections (1) and (4), the Bundesnetzagentur presents a new draft of the results of the market definition and market analysis at the latest every five years, but not before the end of three years after the publication of the results of the market definition and market analysis under section 12 (6). The Bundesnetzagentur can exceptionally extend this period by one year. To this end, it sends the Commission a substantiated proposal for an extension four months before the end of the five-year period. If the Commission has not raised any objections within a month after the sending of the proposed extension by the Bundesnetzagentur, the requested extended review period applies.

(4) If the recommendation under Article 64 (1) of Directive (EU) 2018/1972 has changed, in the case of markets for which the Commission has not received a previous paper under section 12 (2), the drafts of the market definition and market analysis under sections 10 and 11 and the regulatory order under section 13 must be presented within three years after the adoption of the alteration of the recommendation under the procedures of sections 12 and 14.

(5) If the Bundesnetzagentur has not completed the market definition and market analysis under sections 10 and 11 with regard to a relevant market which is stipulated in the current version of Recommendation (EU) 2020/2245 within the prescribed period or if the Bundesnetzagentur doubts that it will be ready in time, it can request BEREC for support with the completion of the market definition, the market analysis and the regulatory order. In the case of such a request, the Bundesnetzagentur presents the Commission with the drafts of the market definition, the market analysis and the regulatory order in the procedure under section 12 (2) within six months after BEREC has commenced its support.

Section 16

Procedure for other market-related measures

Apart from in the cases of sections 10, 11 and 13, the Bundesnetzagentur must carry out the procedure under section 12 (1) for all measures which have significant effects on the market in question prior to a decision, unless legislation stipulates otherwise. Section 12 (7) applies accordingly.

Section 17

Administrative provisions on regulatory principles and applications for information about the regulatory framework for very high capacity networks

(1) To pursue a uniform regulatory concept within the meaning of section 2 (3) no. 1, the Bundesnetzagentur can adopt administrative provisions on its basic approaches and methods for

1. the market definition under section 10,
2. the market analysis under section 11 and
3. the regulatory order under section 13.

(2) In order to promote efficient investment and innovation in the field of new and improved infrastructure within the meaning of section 2 (3) no. 4, the Bundesnetzagentur can, with regard to a regulatory order under section 13 or an obligation under section 22 (1), adopt administrative provisions on the basic regulatory requirements for the consideration of the following aspects:

1. investment risks in the case of projects to construct very high capacity networks and
2. commercial agreements to distribute the investment risk amongst investors and between investors and parties demanding access in the case of projects to construct very high capacity networks.

This particularly embraces requirements regarding the methodology to determine the demands placed on the design of access and fee conditions. To the extent that the requirements are of essential and general significance for the market, the Bundesnetzagentur is to adopt administrative provisions under sentence 1.

(3) The consultation and consolidation procedure under section 12 applies accordingly to the adoption of the administrative provisions under subsections (1) and (2).

(4) The Bundesnetzagentur issues information about the expected regulatory framework conditions or measures under this Part to an operator of public telecommunications networks which is planning or undertaking the construction and expansion of very high capacity networks, on the operator's request, for a specifically designated region.

(5) If the information under subsection (4) has effects on the results of the market definition and the market analysis under sections 10 and 11, the consultation and consolidation procedure under section 12 applies accordingly. If the information has effects on measures under section 13, the consultation and consolidation procedure under section 14 applies accordingly.

Section 18 Commitments

(1) Undertakings with significant market power can present the Bundesnetzagentur with commitments for the access or coinvestment conditions applying to their telecommunications networks so that the Bundesnetzagentur can decide on a binding declaration under section 19; the commitments can refer particularly to the following:

1. commercial agreements which are of relevance to the assessment of suitable and appropriate commitments under section 13;
2. coinvestment offers regarding the construction of very high capacity networks which consist of fibre-optical components up to the buildings of the end-user or the base station, or
3. access for third parties under section 32, both during the period of implementation and following completed implementation of a voluntary functional separation across a vertically integrated undertaking.

At the same time, the undertaking publishes the commitments presented under sentence 1 on its website.

(2) Commitments must be fair, appropriate, non-discriminatory and open to all market participants. The Bundesnetzagentur examines the commitments which have been presented in the market investigation procedure under section 19 unless the commitments which have been presented manifestly fail to fulfil one or several relevant conditions. In its examination, the Bundesnetzagentur particularly considers whether the commitments which have been presented include conditions which ensure equivalence of access under section 24 (2).

(3) Commitments for coinvestment offers under subsection (1) sentence 1 no. 2 must meet the following requirements:

1. the coinvestment offer is open to operators of public telecommunications networks or providers of publicly available

telecommunications services at any time during the lifetime of the telecommunications network;

2. the conditions of the coinvestment offer make it possible for other coinvestors which are operators of public telecommunications networks or providers of publicly available telecommunications services to compete in a lastingly effective and sustainable way on the downstream markets in which the undertaking with significant market power is active; this includes
 - a) fair, appropriate and non-discriminatory conditions which ensure the access to the capacity of the network to a full extent, but at least to the extent corresponding to the coinvestment;
 - b) flexibility regarding the scope and time of the participation of the individual coinvestors, including the possibility to expand the extent of participation in future and to transfer to third parties the rights and obligations taken on in the context of the coinvestment;
 - c) the ensuring of equal mutual rights by the coinvestors after the completion of the construction of the infrastructure covered by the coinvestment, including the granting of mutual access;
3. the coinvestment offer is transparent and is made publicly available by the undertaking with significant market power in time, but at the latest six months before the beginning of the construction of the telecommunications network covered by the coinvestment, on its websites;
4. the conditions of access for undertakings which are not involved in the coinvestment make it possible for parties demanding access on the downstream markets in which the undertaking with market power is active to survive effectively and sustainably in competition in the long term; this embraces fair, appropriate and non-discriminatory conditions of access which at least achieve the quality, the speed and the end-user reach as existed prior to the construction of the infrastructure covered by the coinvestment and an adaptation mechanism which safeguards such conditions with a view to the development of the retail markets, also in the long term.

In this process, the Bundesnetzagentur takes utmost account of the guidelines which BEREC publishes under Article 76 (4) of Directive (EU) 2018/1972.

(4) Commitments under subsection (1) sentence 1 no. 3 must ensure effective and non-discriminatory access for third parties both during the period of implementation and following completed implementation of a voluntary functional separation across a vertically integrated undertaking.

Section 19

Market examination procedure for commitments

(1) The Bundesnetzagentur normally declares commitments by the undertaking with significant market power to be wholly or partially binding for the offered period by way of a decision if they fulfil the conditions of section 18 which are to be applied in the respective case. In derogation of sentence 1, commitments under section 18 (1) sentence 1 no. 2 are to be declared binding for at least seven years.

(2) The Bundesnetzagentur gives the interested parties an opportunity to comment on the commitments presented under section 18 (1), usually within one month.

(3) The Bundesnetzagentur communicates to the undertaking with significant market power a provisional assessment of the presented commitments within six weeks following the deadline for comments under subsection (2). If these commitments do not satisfy the conditions of section 18 to be applied in the respective case, the Bundesnetzagentur informs the undertaking with significant market power of this.

(4) Following the communication of the provisional assessment by the Bundesnetzagentur, the undertaking with significant market power can alter the originally presented commitments within six weeks in order to take account of the Bundesnetzagentur's provisional assessment. The Bundesnetzagentur examines whether the altered commitments meet the conditions of section 18 to be applied in the respective case, and if appropriate declares the commitments to be binding under subsection (2). In the case of significant alterations, the interested parties must again be given an opportunity to comment in the context of the examination under sentence 2.

(5) The Bundesnetzagentur examines an extension of the period twelve months before the expiry of the period of validity of commitments that have been declared binding.

(6) The Bundesnetzagentur supervises and ensures compliance with the commitments it has declared binding under subsection (1). It can call on the undertaking with market power to provide annual declarations of conformity to this end.

Division 2

Access regulation

Subdivision 1

General provisions on access

Section 20

Negotiations on access and interconnection

(1) Operators of public telecommunications networks are entitled and, on demand from other undertakings, are obliged to negotiate with them on an offer for access and interconnection in order to ensure the communications of the users, the provision of telecommunications services and their interoperability throughout the area of the European Union.

(2) Information which is obtained in or after negotiations or agreements on access and interconnection under subsection (1) may only be used for the purposes for which it was provided. The information may not be forwarded to third parties, particularly not to other departments, subsidiaries or business partners of the parties to the negotiations.

(3) The Bundesnetzagentur can on application from parties under subsection (1) be deployed as a neutral mediator in the negotiations to the extent that the competition situation so requires.

Section 21

Access obligation and interconnection in the case of control of access to end-users

(1) In the case of undertakings which control access to end-users, the Bundesnetzagentur can

1. oblige them to interconnect their telecommunications networks with those of other undertakings to the extent that this is necessary to ensure end-to-end connectivity and the provision of services as well as their interoperability;
2. impose further obligations on them to the extent that this is necessary to ensure end-to-end connectivity or to ensure interoperability.

(2) The Bundesnetzagentur can oblige providers of number-independent interpersonal telecommunications services to make their services interoperable when the following conditions are met:

1. the number-independent interpersonal telecommunications services feature significant coverage and a significant user base;
2. end-to-end connectivity between end-users is jeopardised by a lack of interoperability between interpersonal telecommunications services;
3. the obligations are necessary to ensure end-to-end connectivity between end-users and

4. the Commission has adopted implementing measures under Article 61 (2) 2) ii) of Directive (EU) 2018/1972.

(3) The Bundesnetzagentur can oblige operators to ensure access to application programme interfaces and electronic programme guides at fair, balanced and non-discriminatory conditions to the extent that this is necessary to ensure access for end-users to digital radio and television services and related complementary services.

(4) The Bundesnetzagentur's measures under subsections (1) to (3) must be fair, objective, transparent, proportionate and non-discriminatory.

(5) The procedures of section 14 apply accordingly to measures imposed under subsections (1) to (3). The Bundesnetzagentur examines the measures adopted within five years from the time when they were imposed with regard to their effectiveness and to whether their alteration or revocation would be appropriate.

Section 22

Access obligation in the case of barriers to replicability

(1) The Bundesnetzagentur can oblige undertakings to grant other undertakings access to their network at a point past the first concentration or distribution point which is as close as possible to the end-users if

1. the obligation is necessary to remove considerable and persistent economic or physical barriers to a replicability of network elements which are based on an existing or emerging market situation with considerable restrictions to the competitive outcomes for the end-users, and
2. obligations under section 149 (6) on access in buildings or up to the first concentration or distribution point and obligations under section 13 (1) are insufficient.

The Bundesnetzagentur can oblige undertakings to grant access in particular to active or virtually unbundled products. The Bundesnetzagentur stipulates the point for the access with the requirement that, as a result, an efficient seeker of access is able to use an economically viable number of end-user connections.

(2) The Bundesnetzagentur does not impose any access obligations under subsection (1) on an undertaking in the following cases:

1. for a very high capacity network if the undertaking
 - a) is an undertaking solely active on the wholesale product level within the meaning of section 33 and
 - b) offers viable access alternatives at fair, non-discriminatory and appropriate conditions;
2. the economic or financial viability of the construction of new telecommunications networks would be jeopardised by the access obligation, particularly in the context of small local projects.

In derogation of sentence 1 no. 1, the Bundesnetzagentur can impose obligations under subsection (1) if the undertaking uses public funding to finance the construction of the very high capacity telecommunications network. The Bundesnetzagentur can refrain from imposing access obligations for undertakings other than those cited in sentence 1 no. 1 letter a if these grant access to a very high capacity network at fair, non-discriminatory and appropriate conditions.

(3) The measures under subsection (1) must be fair, objective, transparent, proportionate and non-discriminatory.

(4) The procedures of section 14 apply accordingly to measures imposed under subsections (1) and (2) sentence 2. For the Bundesnetzagentur's examination under subsection (1) sentence 1 no. 1 as to whether considerable and persistent economic or physical barriers to a replicability of network elements exist, the deadlines of section 14 (1) apply accordingly. When imposing the measures, the Bundesnetzagentur takes utmost account of the guidelines of BEREC under Article 61 (3) 5) b) of Directive (EU) 2018/1972. It examines the measures adopted within five years after they were imposed with regard to their effectiveness and to whether their alteration or revocation would be appropriate.

Section 23

Access agreements in the case of control of access to end-users or of barriers to replicability

(1) An undertaking on which an obligation under section 21 or 22 has been imposed must offer corresponding access to other undertakings which demand this access service in order to be able to offer telecommunications services without delay, but at the latest three months after the imposition of the access obligation.

(2) Access agreements under subsection (1) must be presented to the Bundesnetzagentur.

Subdivision 2

Access provisions for undertakings with significant market power

Section 24

Prohibition of discrimination

(1) The Bundesnetzagentur can oblige undertakings with significant market power to ensure that access agreements are based on objective benchmarks, are comprehensible, ensure equivalent access and satisfy the requirements of equal opportunities and fairness.

(2) The Bundesnetzagentur can oblige undertakings with significant market power to make available to all undertakings, including themselves, access products and services with the same deadlines and at the same conditions, also with regard to fees and scope of service, and using the same systems and procedures, in order to ensure equivalent access within the meaning of subsection (1).

Section 25

Transparency obligation

(1) The Bundesnetzagentur can oblige undertakings with significant market power to publish all the information necessary for access, particularly

1. on accounting
2. on fees,
3. on technical specifications,
4. on network characteristics and
5. on conditions of provision and use, including all conditions which alter access to and the use of services and applications, in particular due to the migration of legacy infrastructure.

(2) The Bundesnetzagentur can prescribe to an undertaking with significant market power what information must be made available in what form to the extent that this is proportionate.

(3) The Bundesnetzagentur can oblige an undertaking with significant market power to present access agreements in a public and a confidential version without being specifically called on to do so. To the extent that access agreements no longer exist, the undertaking informs the Bundesnetzagentur of this. The Bundesnetzagentur publishes when and where parties demanding access services can inspect the public version of an access agreement presented under sentence 1.

Section 26

Access obligations

(1) The Bundesnetzagentur can oblige an undertaking with significant market power to grant other undertakings access if otherwise the development of a sustainably competitive retail market would be impeded and the interests of the end-users impaired.

(2) In the examination of whether and what access obligations under subsection (1) are justified and whether these are proportionate to the aims under section 2, the Bundesnetzagentur examines whether

1. obligations which have already been or will foreseeably be imposed under this Part or commercial access agreements which have already been concluded or offered on the wholesale market in question or on an associated wholesale market and
2. the mere imposition of obligations under subsection (3) no. 10

suffice to ensure the aims cited in section 2. In so doing, the Bundesnetzagentur gives consideration in particular to:

1. the technical and economic viability of the use or installation of competing facilities in view of the pace of market development, whereby the nature and the type of the interconnection and the access are taken into account, including the viability of other upstream access products;
2. the possibility of granting the proposed access in view of the available capacity;
3. the initial investment of the owner of the facility taking account of any public investment made and the investment risks, particularly those risks associated with investment in very high capacity networks;
4. the need to safeguard competition in the long term giving particular consideration to economically efficient competition on infrastructure and to innovative business models;
5. industrial property rights or intellectual property rights;
6. the provision of Union-wide services and
7. the expected technical evolution of network design and network management.

(3) The Bundesnetzagentur can impose inter alia the following obligations on undertakings which dispose of significant market power, taking account of subsection (1):

1. to grant access to certain physical network elements and associated facilities including physically unbundled access to the local loop;
2. not subsequently to refuse access already granted to facilities;
3. to grant access to certain active or virtual network elements and services, including virtually unbundled broadband access;
4. to create certain necessary preconditions for the interoperability of end-to-end user services or for roaming in mobile communications networks;
5. to grant access to operational support systems or similar software systems which are needed to ensure competition based on equal opportunities in the provision of services, whilst safeguarding the efficiency of existing facilities;
6. to grant access to associated services such as identity, location and presence service;
7. to make it possible to interconnect public telecommunications networks;
8. to grant open access to technical interfaces, protocols or other key technologies which are indispensable for interoperability of services or for services for virtual telecommunications networks;
9. to make possible co-location or other forms of shared use of associated facilities and to grant the seekers of access or those commissioned by them access to these facilities at all times and
10. to grant access to structural installations, which inter alia include buildings or access to buildings, cabling in buildings, antennae, towers and other supporting constructions, poles, masts, conduits, ducts, inspection chambers, manholes and distribution boxes, even if these are not part of the objectively relevant market under section 10, as long as the access obligation is necessary and appropriate in view of the problem determined in the market analysis

under section 11.

(4) If an undertaking demonstrates that the use of the service would jeopardise the maintenance of network integrity or the security of network operation, the Bundesnetzagentur will not impose the respective access obligation, or will do so in a different form. The maintenance of network integrity and the security of network operation must be assessed on the basis of objective benchmarks.

(5) If the Bundesnetzagentur imposes an access obligation on an undertaking, it can stipulate technical or operational conditions which must be met by the operator or the users of this access to the extent necessary to ensure the normal operation of the telecommunications network. Obligations to apply certain technical standards or specifications must coincide with the standards and specifications stipulated under Article 39 of Directive (EU) 2018/1972.

(6) In the context of fulfilment of the access obligations, possibilities to use access services and possibilities for cooperation between the undertakings entitled to access must be allowed unless an undertaking demonstrates in an individual case that a possible use or cooperation is not possible for technical reasons, or is only possible to a limited extent.

Section 27

Obligations on uniform invoicing and collection

(1) The Bundesnetzagentur can oblige an undertaking with significant market power to grant services in the field of uniform invoicing and the receipt or first collection of payments in line with the following subsections.

(2) To the extent that the end-user has not agreed otherwise with other providers of publicly available telecommunications services, the issuer of the invoice must provide him or her with an invoice which, irrespective of the design of the tariff, also displays the fees for telecommunications services and telecommunications-based services of other providers which are used via the end-user's network access. The payment of these fees to the issuer of the invoice takes place uniformly for the entire service which has been used and for the issuer's claims.

(3) The following obligations cannot be imposed:

1. an obligation to issue invoices for
 - a) unmetered services within the meaning of subsection (2) sentence 1 with fees exceeding 10 euros,
 - b) metered telecommunication-based services, in each case with fees exceeding 2 euros per minute and
 - c) all services for which an authorisation procedure is required;
2. an obligation to handle complaints regarding services invoiced for third parties;
3. an obligation to send reminders, and
4. an obligation to enforce the claims of third parties.

(4) The issuer of the invoice must transmit to the providers of publicly available telecommunications services the debtor's name, address and access identifier to the extent that this is necessary for the purposes of handling complaints, sending reminders and enforcing claims for services within the meaning of subsection (2) sentence 1.

(5) Providers of publicly available telecommunications services must ensure in relation to the issuer of the invoice that it is not sent any data records for the invoicing of services which do not comply with the statutory rules. The issuer of the invoice does not bear responsibility or liability for services invoiced by third parties.

(6) The issuer of the invoice must clearly emphasise in its reminders that the customer can pay not only the amount of the reminder, but also what may be the higher original amount of the invoice to the issuer of the invoice in order to discharge his or her legal obligations.

(7) Obligations imposed under subsection (1) are not applied to the extent that the issuer of the invoice has concluded an agreement with the bulk of the market that is relevant to this extent of the providers of publicly available telecommunications services which can be selected by their access customers and also grants non-discriminatory access to these services to other providers which are not party to such an agreement in line with the conditions set out in the

agreement.

Section 28

Access agreements

- (1) An undertaking with significant market power on which an access obligation under section 26 or 27 has been imposed must offer corresponding access to other undertakings which demand this service in order to be able to deliver telecommunications services without delay, but at the latest three months after the imposition of the access obligation.
- (2) Access agreements under subsection (1) must be presented to the Bundesnetzagentur.

Section 29

Reference offer

- (1) The Bundesnetzagentur can oblige an undertaking with significant market power to publish a reference offer for the following access services:
1. access services which the undertaking has been required to grant under section 26 and
 2. access services for which general demand exists.
- (2) To the extent that the Bundesnetzagentur has obliged an undertaking to publish a reference offer, the undertaking must present the draft of a reference offer within three months of the entry into force of the obligation which contains a product description and conditions of provision and use, including the fees. Sentence 1 does not apply if a reference offer has already been stipulated and its minimum period has yet to expire. The Bundesnetzagentur publishes the presented draft on its website and following publication gives the parties opportunity to comment within an appropriate period.
- (3) The Bundesnetzagentur examines whether the draft reference offer under subsection (2) meets the criteria of equal opportunities, fairness and timeliness and is sufficiently comprehensive for it to be able to be accepted by individual access seekers without further negotiations. In so doing, it takes utmost account of the guidelines of BEREC on minimum criteria for reference offers under Article 69 (4) sentence 1 of Directive (EU) 2018/1972.
- (4) If the draft reference offer presented under subsection (2) satisfies the requirements of subsection (3), the Bundesnetzagentur stipulates the reference offer and endows it with a minimum period. Otherwise, the Bundesnetzagentur calls on the undertaking to present a revised draft within an appropriate deadline. The Bundesnetzagentur can combine this demand with requirements for individual conditions, including contractual penalties.
- (5) The Bundesnetzagentur publishes the draft revised reference offer under subsection (4) sentence 2 on its website and following publication gives the parties opportunity to comment within an appropriate period. The Bundesnetzagentur examines whether the revised draft meets the requirements of subsection (3). The Bundesnetzagentur can make changes to the reference offer and endow it with a minimum period to the extent that the undertaking has not implemented requirements for individual conditions or has not done so adequately.
- (6) If the undertaking does not publish a draft reference offer under subsection (1) no. 2, the Bundesnetzagentur ascertains the access services for which general demand exists and stipulates which of the ascertained services are to be components of a reference offer. It calls on the undertaking to present a draft corresponding to the requirements of subsection (2) within three months following stipulation of the service components.
- (7) The undertaking must present intended changes or plans to discontinue the reference offer to the Bundesnetzagentur for examination.
- (8) The decisions under subsection (4) sentence 2 and subsection (5) sentence 3 can only be challenged as a whole. The provisions of Division 3 apply to the regulation of the fees.
- (9) The Bundesnetzagentur can oblige the undertaking to alter a stipulated reference offer if it no longer satisfies the

requirements of subsection (3). If the Bundesnetzagentur has obliged an undertaking to present a reference offer under subsection (1) no. 2 and if the general demand has changed significantly, sentence 1 applies accordingly. Subsections (2) to (7) apply accordingly to the alteration of the reference offer.

(10) The undertaking is obliged to include the reference offer in its General Terms and Conditions.

Section 30 Separate accounting

(1) The Bundesnetzagentur can prescribe separate accounting for an undertaking with significant market power for certain activities relating to access services. The Bundesnetzagentur can in particular demand that a vertically integrated undertaking with significant market power design its wholesale prices and its internal transfer prices in a transparent manner. Here, the Bundesnetzagentur can impose specific requirements on the format and the accounting method to be used.

(2) The Bundesnetzagentur can demand that it is presented with the cost calculation and accounting documents under subsection (1) including all related information and documents on demand in a prescribed form. The Bundesnetzagentur can publish this information in an appropriate form to the extent that this contributes to the attainment of the aims cited in section 2. Here, the provisions on the upholding of commercial or operational secrets must be observed.

Subdivision 3 Other access provisions for undertakings with significant market power

Section 31 Obligation to separate the functions of a vertically integrated undertaking

(1) If the Bundesnetzagentur concludes that the obligations imposed under section 13 (1) have not resulted in effective competition and that significant and persistent competition problems or market failure exist on the markets for certain access products at wholesale level, it can, as an extraordinary measure, oblige vertically integrated undertakings with significant market power to place their activities relating to the provision of the relevant access products at wholesale level in an independently operating business entity in the form of a functional separation. This business entity makes available access products and services to all undertakings, including the other business entities of its own parent undertaking, with the same deadlines and at the same conditions, including the fees and the scope of the service, and using the same systems and procedures.

(2) If the Bundesnetzagentur intends to impose an obligation of functional separation, it transmits to the Commission a corresponding application containing the following:

1. the evidence that the Bundesnetzagentur's conclusion cited in subsection (1) is substantiated;
2. a substantiated assessment that there is no or little prospect of effective and sustainable competition on infrastructure within an appropriate period of time;
3. an analysis of the expected effects on the Bundesnetzagentur, on the undertaking, in particular on the staff of the separated business entity and on the telecommunications sector as a whole, including the investment incentives, particularly regarding the necessary preservation of social and territorial cohesion and on other interested parties, including the expected effects on competition and possible consequences for the end-users;
4. an analysis of the reasons which indicate that this obligation is the most effective means to curb the identified competition problem or market failure.

(3) Along with the application under subsection (2), the Bundesnetzagentur presents the Commission with a draft list of measures which includes the following:

1. the precise details of the nature and extent of the separation, in particular the details of the legal status of the separated business entity;
2. the details of the assets of the separated business entity and the products and services to be provided by this business entity;
3. the organisational modalities to ensure the independence of the staff of the separated business entity and the corresponding incentives;
4. provisions to ensure compliance with the obligations;
5. provisions to ensure the transparency of the operational processes, particularly in relation to the other interested parties;
6. a monitoring programme ensuring compliance with the obligation, including the publication of an annual report.

(4) Following the Commission's decision on the application under subsection (2), the Bundesnetzagentur undertakes a coordinated analysis of the markets related to the access network in line with the procedure under section 12. On the basis of its analysis, the Bundesnetzagentur adopts a regulatory order in the procedure under section 14.

(5) Each of the obligations under section 13 (1) can be imposed on an undertaking with market power which has been required to undertake functional separation for each individual market on which it has been categorised as an undertaking with significant market power under section 11.

Section 32

Voluntary functional separation by a vertically integrated undertaking

(1) A vertically integrated undertaking with significant market power will inform the Bundesnetzagentur at least three months in advance of its intention to transfer the installations of the access network wholly or to a large part to a different company with a different owner or to set up a separate business entity in order in this way to supply all providers at retail level, including its own corporate entities active at retail level, with completely equivalent access products. The undertaking will also inform the Bundesnetzagentur about all alterations to this intention and about the outcome of the functional separation process.

(2) The Bundesnetzagentur examines the possible consequences of the intended transaction under subsection (1) and any commitments under section 18 (1) sentence 1 no. 3. To this end, in line with the procedure of section 11, it undertakes a coordinated analysis of the markets in which there is a connection to the access network. To the extent that the undertaking presents commitments, the Bundesnetzagentur undertakes the market examination procedure under section 19. It can enact a regulatory order in the procedure under section 14 with regard to the undertaking, including the legally or operationally separated business entity, to the extent that the latter has significant market power on a market, to the extent that commitments which have been declared to be binding are insufficient to attain the aims under section 2. This is without prejudice to section 33.

Section 33

Undertakings solely active on the wholesale product level

(1) The Bundesnetzagentur can, in derogation of section 13 (1), impose obligations under section 24, section 26 (3) no. 1 to 9 or under Division 3 on an undertaking with significant market power which is not active on any retail market for publicly available telecommunications services to the extent that the following preconditions exist:

1. ongoing and planned activities in all business entities of the undertaking and all shareholders who can exercise control over the undertaking take place solely on the wholesale product markets for publicly available telecommunications services;

2. there are no exclusive agreements or agreements which are tantamount to being exclusive agreements between the undertaking and another undertaking which is active on retail markets for publicly available telecommunications services.
- (3) The Bundesnetzagentur proceeds in line with section 15 (1) if it has knowledge or has been given knowledge of facts which show that
1. the preconditions of subsection (1) are no longer met or
 2. the conditions which the undertaking offers to undertakings active on downstream markets lead, or are likely to lead, to competition problems to the detriment of the end-users.
- The undertaking will inform the Bundesnetzagentur without delay about facts within the meaning of sentence 1.

Section 34

Migration of legacy infrastructure

- (1) If an undertaking with significant market power intends to decommission parts of its telecommunications network or to replace them with new infrastructure and as a result of this the offer of an access product for which a requirement has been imposed under section 26 becomes impossible, it must inform the Bundesnetzagentur of this in time, but at least one year before the commencement of decommissioning or the replacement.
- (2) The notification by the undertaking under subsection (1) must include the following:
1. a timetable for the process of decommissioning or replacement,
 2. the conditions of the migration, including a description of the alternative access products offered during and following the completion of the migration, and
 3. the application to alter the reference offer to the extent that the undertaking has published a reference offer in line with section 29 for the access product for which a requirement has been imposed.
- (3) The Bundesnetzagentur publishes the documents presented under subsection (2) on its website whilst upholding operational and commercial confidentiality and gives the interested parties an opportunity to comment on these within an appropriate period, which should be at least one month.
- (4) The Bundesnetzagentur examines the documents on the decommissioning or replacement process presented under subsection (2). Here, it sets out a transparent timetable, including an appropriate cancellation period for the access agreement, and transparent and appropriate conditions. The stipulation also covers the availability of alternative access products at fair, appropriate and non-discriminatory conditions, to the extent that this is necessary to uphold competition and the rights of the end-users. The conditions of the alternative access products, including quality, speed and end-user range, must in any case be comparable to the conditions of the previously available access products.
- (5) The Bundesnetzagentur can revoke the obligations imposed on the undertaking for those telecommunications networks which are decommissioned or replaced when the cancellation of the access agreement takes effect if the conditions of subsection (4) sentence 2 and 3 are complied with. The procedure under section 14 applies. The alteration of the reference offer takes place at the same time as the alteration of the regulatory order.
- (6) This does not affect the regulatory order under section 13 for the upgraded or new network infrastructure.
- (7) If an undertaking with significant market power intends to sell its network or parts of it, subsections (1) to (5) apply accordingly to the sales process.

Subdivision 4

General provisions

Section 35

Orders in the context of access regulation

(1) If an access agreement under section 23 or 28 does not come into being, wholly or partly, and if the preconditions required under this Act for an obligation to grant access exist, the Bundesnetzagentur will order access following a hearing of the parties. The order is made within a period of ten weeks from the appeal in writing or electronically by one of the parties to the access agreement to be concluded, or from the launching of a procedure ex officio, to the extent that this is necessary to attain the aims of section 2. In cases for which particular justification is made, the Bundesnetzagentur can extend the procedure to up to four months within the period under sentence 2.

(2) An order under subsection (1) is admissible only to the extent that and as long as the parties do not conclude an access or interconnection agreement.

(3) The appeal under subsection (1) sentence 2 must be substantiated. In particular, the following must be demonstrated:

1. what precise content the order by the Bundesnetzagentur is to have,
2. when the access was sought, and what specific services were sought,
3. that serious negotiations have taken place or that negotiations have been refused by the respondent to the appeal,
4. on which points no agreement was reached and
5. how the desired technical measures can be technically implemented.

This appeal can be withdrawn until the order is enacted.

(4) The subject of an order under subsection (1) can be all conditions of an access agreement and the fees. The Bundesnetzagentur may attach to the order conditions, including contractual fines, with regard to equal opportunities, fairness and timeliness. The provisions of Division 3 apply to the regulation of the fees.

(5) If both the conditions of an access agreement and the fees to be paid for requested services are in dispute, the Bundesnetzagentur is to take separate decisions about the conditions and about the fees. If the Bundesnetzagentur takes separate decisions, the deadlines cited in subsection (1) apply to these respective decisions. The order by the Bundesnetzagentur can only be challenged in its entirety.

(6) Documents presented in the course of the procedure will only be considered if this does not jeopardise compliance with the deadline stipulated in subsection (1) sentence 2.

(7) The affected undertakings must comply without delay with an order by the Bundesnetzagentur under subsection (1) unless the Bundesnetzagentur has stipulated an implementation deadline in the order. In order to enforce the order, the Bundesnetzagentur can, in line with the Administrative Enforcement Act, stipulate a coercive fine of up to one million euros.

Section 36

Publication

The Bundesnetzagentur publishes the measures taken under this Division whilst preserving operational or commercial secrets of the affected undertakings.

Division 3

Fee regulation

Subdivision 1
Fee provisions for access services

Section 37
Abusive conduct by an undertaking with significant market power in the demanding and agreeing of fees

(1) An undertaking with significant market power may not abuse this position when demanding and agreeing fees with end-users or other undertakings. Abuse exists in particular if the undertaking demands fees which

1. are only enforceable against end-users or other undertakings due to its significant market power on the respective telecommunications market or
2. the possibilities for other undertakings to compete on a telecommunications market are significantly impaired.

A type of conduct under sentence 2 no. 2 does not represent abuse if it is demonstrated that there is an objective justification for it.

(2) Abuse by the undertaking with significant market power within the meaning of subsection (1) sentence 2 no. 2 is assumed to exist if

1. the fee for the respective service does not cover the long-term additional costs of the service, including an appropriate return on the deployed capital,
2. the undertaking grants via the fee advantages over other seekers of the same or similar services to certain seekers of services, including itself or its subsidiaries or partner undertakings; the differentiation of fees in the context of commercial agreements to construct very high capacity networks does not normally represent conduct within the meaning of this number if this serves to distribute the risk of investment amongst investors and between investors and seekers of access, and all actual and potential seekers of access are treated equally in view of the risk each has taken on,
3. the margin between the fee which the undertaking charges other undertakings for an access service and the corresponding end-user fee is insufficient to enable an efficient undertaking to achieve an appropriate return on the deployed capital on the retail market (price-cost squeeze),
4. the margin between the fees which the undertaking charges for access services provided at various stages of the value chain does not appropriately reflect the difference in value creation (cost-cost squeeze) or
5. the undertaking undertakes an objectively unjustified bundling of its product offer; when examining whether this is the case, the Bundesnetzagentur must examine in particular whether it is possible for other efficient undertakings to offer the bundled product at comparable conditions.

Section 38
Fee regulation

(1) The Bundesnetzagentur can oblige undertakings with significant market power to present fees for access services for authorisation in the procedure under section 40 or to notify them in the procedure under section 45 if otherwise the development of a sustainably competitive retail market would be impeded by abusive fee-based measures by the undertaking and the interests of the end-users impaired. This is without prejudice to the retrospective review of abusive fees under section 46.

(2) In the case of very high capacity networks, the Bundesnetzagentur examines in particular whether it will dispense with imposing an obligation on the undertaking under subsection (1) to present the fees for authorisation in the procedure under section 40 or to notify them in the procedure under section 45, to the extent that for such networks

1. demonstrable price pressure on retail prices exists and
2. effective and non-discriminatory access is safeguarded which ensures a technical and economic replicability of the retail products of the undertaking with market power by efficient seekers of access.

The Bundesnetzagentur can examine the fees with regard to their economic replicability in the procedure under section 46 or, if this objectively justified, can proceed under section 40 or section 45. A procedure under sentence 2 is also possible if, in view of a low population density in a specific region, the incentives for the expansion of very high capacity networks are small and access under sentence 1 no. 2 is ensured.

(3) Fees which an undertaking demands in the context of obligations under section 21 or section 22 are subject to a subsequent abuse review under section 46. In derogation of sentence 1, the Bundesnetzagentur can oblige the undertaking to present the fees for authorisation in the procedure under section 40 or to notify them in the procedure under section 45 if this is necessary to attain the aims under section 2.

(4) The Bundesnetzagentur can impose obligations on an undertaking with significant market power with regard to cost accounting methods, including the use of a specific form of cost accounting. In this case, it can oblige the undertaking with significant market power to publish a description of the cost accounting method which corresponds to the requirements, stating the main types of costs and the cost allocation rules. The Bundesnetzagentur or an independent body commissioned by it examines the application of the obligations imposed under this subsection and publishes its findings once a year. The undertaking transmits the data necessary for this electronically to the Bundesnetzagentur on a regular basis.

(5) The Bundesnetzagentur gives consideration

1. in the examination of whether and what fee measures are justified, and of whether these are proportionate to the aims under section 2, in particular to the need to promote a sustainably competitive market and the long-term end-user interests in the expansion of new and improved telecommunications networks, especially very high capacity networks;
2. in the case of fee regulation in particular to whether the measures in their entirety, including in terms of timing and content, are coordinated with one another (need for consistency), and to the incentives for the expansion of new and improved telecommunications networks which promote economic efficiency and sustainable competition and serve the long-term interests of the end-users; to this end it takes account of the underlying investments and makes it possible to attain an appropriate return on the deployed capital, whereby it will take account of specific investment risks, taking utmost account of agreed commercial access agreements;
3. in the case of fee regulation with regard to the access to structural installations under section 26 (3) no. 10 in particular to the consequences of granting access for the business plan of the undertaking with significant market power.

(6) If fee regulation of access services under subsection (1) relates to termination services of undertakings with significant market power, the Bundesnetzagentur takes utmost account of the principles, criteria and parameters of Annex III of Directive (EU) 2018/1972 to the extent that Union-wide fees for termination services are not stipulated by a delegated legal instrument of the Commission under Article 75 (1) of Directive (EU) 2018/1972. If the Commission stipulates Union-wide fees for termination services, the Bundesnetzagentur will ensure compliance with them. Section 44 (1) and (2) applies accordingly.

Section 39 **Benchmarks for fee authorisation**

(1) The Bundesnetzagentur authorises fees presented under section 38 (1) sentence 1 or (3) sentence 2

1. on the basis of the benchmarks of section 37,
2. on the basis of the costs of efficient service provision under section 42 accruing to the individual services or
3. on the basis of a different approach; such an approach must be particularly substantiated.

Irrespective of the current benchmark for fee authorisation, authorised fees must not be abusive in line with section 37; section 37 applies accordingly to authorised fees under section 38 (3) sentence 2.

(2) The Bundesnetzagentur determines which benchmark of fee authorisation under subsection (1) is best suited to attaining the aims under section 2. In the case of subsection (1) sentence 1 no. 3, section 42 (2) and (3) applies accordingly to the application of cost-oriented approaches. The Bundesnetzagentur can determine the benchmark of fee regulation in the context of the regulatory order under section 13.

Section 40

Fee authorisation procedure

(1) If fees are subject to an authorisation requirement under section 38, an application for authorisation must be submitted to the Bundesnetzagentur before the intended entry into force. The application must contain the fees, the cost documents under section 43 and all other documents necessary for the issuing of the authorisation. In the case of authorisations issued on a temporary basis, the presentation of the fee application must take place at least ten weeks before the expiry of the deadline.

(2) The Bundesnetzagentur can call on undertakings whose fees are subject to an authorisation requirement under section 38 to submit applications for fee authorisation. Subsection (1) sentence 2 applies to the application. If this call is not followed within one month after it has been received, the Bundesnetzagentur will launch a procedure ex officio.

(3) The Bundesnetzagentur examines the compliance with the benchmark of fee authorisation stipulated under section 39 (1) for each individual fee. To this end, it can, in addition to the documents available under subsection (1) or (2)

1. take as a comparison prices of those undertakings which offer corresponding services on comparable markets open to competition; here, consideration must be given to the special features of the comparable markets; or
2. set up an cost account independent of the undertaking's cost calculation, and draw on cost models for this.

To the extent that the available documents are not sufficient for a decision under subsection (5), this decision can also be based on an examination under sentence 2 no. 1 or 2.

(4) To the extent that in the context of the examination under subsection (3) the Bundesnetzagentur arrives at the finding that fees correspond to the stipulated benchmarks of fee authorisation, it will issue a whole or partial temporary authorisation. The authorisation of the fees must be wholly or partly refused to the extent that the fees are not in conformity with this Act or other legal provisions. The Bundesnetzagentur can also refuse authorisation of the fees if the undertaking has not presented all the cost documents cited in section 43.

(5) The Bundesnetzagentur publishes the draft of a decision, usually within ten weeks of receiving an application for fee authorisation. The procedures of section 14 apply accordingly. If the Bundesnetzagentur has launched a procedure ex officio in line with subsection (2) sentence 3, the ten-week period applies from the time of the launch of the procedure.

Section 41

Legal protection in the case of procedures of fee authorisation

(1) If fee authorisations contain the full or partial authorisation of a fee that has already been contractually agreed, they will have retroactive effect to the time of the first provision of the service by the undertaking with significant market power. In the procedure under section 123 of the Code of Administrative Court Procedure, the court can order the provisional payment of a higher fee that has been applied for if it is predominantly likely that the claim to the authorisation of the higher fee will be accepted; there is no need to substantiate the order. If the court obliges the Bundesnetzagentur to issue an authorisation for a higher fee, this authorisation will have retroactive effect under sentence 1 only if an order under sentence 2 has been made. The application for the adoption of an interim order under section 123 (1) of the Code of Administrative Court Procedure can only be made and substantiated up to the end of two months after the action has been brought.

(2) If fees are first authorised after 31 July 2018, subsection (1) sentence 3 will not apply if the contractual partner in accordance with subsection (1) sentence 1 seeks access services and this undertaking has achieved an annual turnover of more than 100 million euros in the last financial year before the bringing of the action for which an annual financial

statement exists. Turnover of affiliated undertakings within the meaning of section 3 no. 69 must be considered if the affiliated undertakings also earn turnover on telecommunications markets.

(3) In the procedure under subsection (1) in conjunction with section 123 of the Code of Administrative Court Procedure, the court can order by decision that only those people are summoned who apply for this within a certain deadline. The decision is non-appealable. It must be announced in the electronic Federal Gazette. It must also be published on the website of the Bundesnetzagentur. The announcement can also be made in an information and communication system chosen by the court for announcements. The deadline must be at least one month from the date of publication in the electronic Federal Gazette. The publication on the website of the Bundesnetzagentur must state the date upon which the deadline expires. Section 60 of the Code of Administrative Court Procedure applies accordingly with respect to restoration of the status quo ante where a time limit has not been complied with. The court is to summon persons who will be evidently affected to a particular degree by the decision, even without an application being made. In the cases of subsection (2) sentence 1, sentences 1 to 9 apply to all appeal procedures of the undertaking with significant market power which are intended to bring about authorisation of a higher fee that has been applied for.

Section 42

Costs of efficient service provision

(1) The costs of efficient service provision cover the long-term additional costs of service provision and an appropriate surcharge for the overheads unaffected by the volume of the service, including an appropriate return on the deployed capital, to the extent that these costs are necessary in each case for the provision of the service.

(2) Expenses which are not contained in the costs of efficient service provision are only considered in addition to subsection (1) to the extent that and as long as there is a legal obligation for them or that the undertaking applying for the authorisation provides proof of another objective justification. Expenses to be considered can also be fees for procedures at ruling chambers.

(3) When stipulating the appropriate return on the deployed capital, the Bundesnetzagentur particularly considers

1. the capital structure of the regulated undertaking,
2. the situation on the national and international capital markets and the rating of the regulated undertaking on these markets,
3. the requirements regarding the yield for the deployed capital, with consideration also being given to the service-specific risks of the deployed capital; this also includes consideration of any specific investment risks in accordance with section 38 (5) no. 1,
4. the long-term stability of the economic framework, also in terms of the competitive situation on the telecommunications markets,
5. an EU-wide harmonisation of the methods used to determine the interest rate.

(4) Expenses which are due to a change in the ownership or legal form of the undertaking cannot be considered in the determination of the costs of efficient service provision in accordance with subsection (1) or as expenses in accordance with subsection (2).

Section 43

Cost documents

(1) Cost documents to be presented in the procedure under section 40 (1) and (2) are in particular

1. current evidence of costs which, unless ordered otherwise, must be provided electronically,
2. a detailed description of the service, including data on the quality of the service,
3. a draft of the General Terms and Conditions,

4. the information as to whether the service is the subject of an access agreement under section 23 or section 28, a stipulated reference offer under section 29 or an access order under section 47,
5. information about
 - a) turnover,
 - b) sales volumes,
 - c) the level of the individual costs under subsection (2),
 - d) the level of the contribution margins and
 - e) the development of the structures of seekers of the service for which the application has been made in the two previous years and the year of the application and the following two years and
6. to the extent that no flat-rate tariffs are applied for certain services or service elements, a justification of why such an application is exceptionally not possible.

(2) The evidence of costs under subsection (1) no. 1 comprises the costs which can be directly attributed (individual costs) and the costs which cannot be directly attributed (overheads). In particular, it is necessary to present

1. the input quantities underlying the cost account, the related prices, both individually and as an average, and the achieved and expected capacity utilisation in the period covered by the evidence and
2. the method of determination of the costs and the investment values and the citing of plausible quantitative keys for the allocation of costs to the individual services of the undertaking.

(3) The undertaking making the application must present regularly once a year at the conclusion of each financial year the undertaking's total costs and their breakdown amongst the cost centres and the individual services in terms of individual and overhead costs. Here, the information for non-regulated services can be summarised.

(4) The cost evidence under subsection (1) no. 1 must be sufficiently transparent and processed to permit examination by the Bundesnetzagentur and a decision within the deadline under section 40 (5).

(5) Documents not presented with the application will only be considered if this does not jeopardise compliance with the normal ten-week deadline under section 40 (5). To the extent that the Bundesnetzagentur demands additional documents and information during the procedure, this must only be considered if the undertaking making the application presents them within a deadline set by the Bundesnetzagentur.

(6) Cost accounting methods must basically be applied in a uniform manner in all applications by the undertaking submitting the application.

(7) This is without prejudice to the powers under section 47.

Section 44 **Deviation from authorised fees**

(1) If fees of an undertaking with significant market power are subject to an authorisation requirement under section 38, the undertaking may not demand any fees other than those authorised by the Bundesnetzagentur.

(2) Contracts on services which contain fees other than those authorised for these services will be effective with the proviso that the authorised fee replaces the contractually agreed fee.

(3) A contractual or statutory obligation to provide the service remains in place irrespective of the existence of a fee authorisation. The Bundesnetzagentur can prohibit advertising for a legal transaction and the conclusion, preparation and initiation of a legal transaction which contains a fee other than that authorised or a non-authorised fee which is subject to authorisation.

Section 45

Fees display procedure

- (1) If the Bundesnetzagentur has obliged the undertaking with significant market power under section 38 to notify fees, these must be notified two months before their planned entry into force.
- (2) The Bundesnetzagentur prohibits within two weeks from receipt of the notification the introduction of the fees notified under subsection (1) until the conclusion of its examination to the extent that the planned fee measure would manifestly be incompatible with section 37; in the case of section 38 (3) sentence 2, section 37 applies accordingly. The Bundesnetzagentur proceeds in line with section 46 for the remaining examination.

Section 46

Retrospective abuse review

- (1) If the Bundesnetzagentur becomes or is made aware of facts justifying the assumption that fees for access services charged by undertakings with significant market power do not satisfy the requirements of section 37, the Bundesnetzagentur will launch a review of the fees without delay; in the case of section 38 (3) sentence 2, section 37 applies accordingly. The Bundesnetzagentur informs the affected undertaking of the launch of the review in writing or electronically.
- (2) The Bundesnetzagentur takes a decision within two months following the launch of the review under subsection (1).
- (3) If the Bundesnetzagentur determines in the decision under subsection (2) that fees for access services do not satisfy the requirements of section 37, it will prohibit the conduct banned under this Act and declare the challenged fees to be ineffective from the time of the determination.
- (4) If the affected undertaking presents proposals for alteration of the fees within one month of the time of the determination under subsection (3), the Bundesnetzagentur will examine within one month from the presentation of the proposals whether they remedy the violations that have been determined to exist against the requirements of section 37. The determination that altered fees satisfy the requirements of section 37 renders these fees effective without delay.
- (5) If no presentation is made under subsection (4) or if the Bundesnetzagentur arrives at the determination under subsection (4) that the presented revised fees are unsatisfactory, the Bundesnetzagentur will order within two months of the determination under subsection (4) fees which satisfy the requirements of section 37. In the case of abuse within the meaning of section 37 (2) no. 5 it also orders the manner in which the undertaking must undertake an unbundling.
- (6) If an order is made under subsection (5), section 44 applies accordingly.

Subdivision 2

General provisions

Section 47

Orders in the context of fee regulation

- (1) The Bundesnetzagentur can, in the context of or in preparation of fee regulation procedures under this Division, order that the undertaking with significant market power
1. provides its detailed information about the scope of services, about the current and expected turnover from services, about the current and expected sales volumes and costs, about the likely effects on the end-users and on the other undertakings and other documents and information which it deems necessary for the appropriate exercise of fee

regulation,

2. transmits the cost account in a form which enables the Bundesnetzagentur to obtain the data necessary for fee regulation on the basis of this Act or
3. offers access under certain tariff systems and applies certain cost covering mechanisms.

Unless ordered otherwise, the undertaking must transmit information under sentence 1 in writing or electronically to the Bundesnetzagentur. If the Bundesnetzagentur issues an order under sentence 1 no. 3, the undertaking must present a corresponding fee application within two weeks. The Bundesnetzagentur decides within four weeks following the presentation of the application or following the expiry of the deadline cited in sentence 3.

(2) In order to enforce the orders under subsection (1) sentence 1 no. 1 and 2, the Bundesnetzagentur can, in line with the Administrative Enforcement Act, stipulate a coercive fine of up to one million euros.

(3) The Bundesnetzagentur can also demand information under subsection (1) sentence 1 no. 1 and 2 from undertakings which do not dispose of significant market power and proceed in line with subsection (2) if this is necessary for an appropriate exercise of fee regulation.

Section 48 Publication

(1) The Bundesnetzagentur publishes fee measures imposed under Subdivision 1.

(2) The Bundesnetzagentur can issue orders to the affected undertaking about the form in which a fee or a fee alteration including the service description and other fee-related elements are to be published.

Division 4 Regulation of retail services

Section 49 Regulation of retail services

(1) If facts justify the assumption that the obligation in the access field under Division 2 Subdivision 2 and Division 3 would not result in the attainment of the aims under section 2 and the development of a sustainably competitive downstream retail market, the Bundesnetzagentur can also impose obligations on undertakings in a retail market in which the undertaking disposes of significant market power.

(2) The Bundesnetzagentur can also subject fees for retail services to fee regulation under subsection (1); Division 3 applies accordingly.

Division 5 Special supervision of abuse

Section 50
Abusive conduct by an undertaking with significant market power

(1) An undertaking with significant market power may not abuse this position against end-users or against other undertakings. Abuse exists in particular if the undertaking

1. unfairly impedes other undertakings directly or indirectly or
2. significantly impairs the possibilities for other undertakings to compete on a telecommunications market.

A type of conduct under sentence 2 no. 2 does not represent abuse if it is demonstrated that there is an objective justification for it.

(2) Abuse within the meaning of subsection (1) sentence 2 no. 2 is assumed to exist if

1. the undertaking grants advantages over other seekers of the same or similar services to certain seekers of those services, including itself or its subsidiaries or partner undertakings or
2. the undertaking fails to fulfil its obligation deriving from section 28 (1) by delaying the processing of access applications.

(3) If the Bundesnetzagentur is aware or is made aware of facts which justify the assumption that abuse under subsection (1) exists, the Bundesnetzagentur will without delay launch a review procedure and will inform the affected undertaking of this in writing or electronically. It normally decides within a period of four months following the launch of the procedure whether abuse of a dominant position exists.

(4) If the Bundesnetzagentur arrives in the context of the review under subsection (3) at the decision that abuse by an undertaking with significant market power exists, it will take measures to end the abuse. To this end, it can impose or prohibit a form of conduct by the undertaking. It can declare contracts to be fully or partially invalid.

Part 3
Customer protection

Section 51
Non-discrimination, consideration of the interests of end-users with disabilities

(1) Operators of public telecommunications networks and providers of publicly available telecommunications services may not impose on end-users different requirements or general conditions for access to the networks or services or for their use which are based on nationality, place of residence or the place of the establishment of the end-user unless this different treatment is objectively justified.

(2) The interests of end-users with disabilities must be taken into consideration by the providers of publicly available telecommunications services when the services are planned and provided. Access must be made possible which is equivalent to the access enjoyed by the majority of end-users. Access to the telecommunications services must be available at all times to end-users with disabilities. The same goes for the choice of undertakings and services.

(3) After a hearing of the affected associations and of the undertakings, the Bundesnetzagentur will stipulate the need under subsection (2) deriving from the needs of end-users with disabilities. The Bundesnetzagentur is authorised to impose obligations on the undertakings in order to safeguard the service and the service characteristics. The Bundesnetzagentur can refrain from imposing such obligations if a hearing of the affected stakeholders shows that these service characteristics or comparable services are deemed to be widely available.

(4) The providers of voice communications services make available text and video relay services for end-users with no or

impaired hearing at an affordable price, taking account of their special needs. The Bundesnetzagentur ascertains the need for these text and video relay services with participation from the relevant associations and the undertakings. To the extent that undertakings do not provide needs-oriented text and video relay services, the Bundesnetzagentur commissions a service provider with the provision of a text and video relay service at an affordable price. Here, it can provide for a threshold up to which the use of the text and video relay service is free of charge for the user. The costs of this provision which are not covered by the fees to be paid by the user are borne by the undertakings which do not provide a needs-oriented text and video relay service. The share of these costs to be borne by an undertaking is measured by the proportion of the share of the outgoing connections provided by the respective undertaking in the total volume of all outgoing connections provided by all undertakings which are obliged to pay, and is stipulated by the Bundesnetzagentur. The obligation to pay does not apply to undertakings which have provided less than 0.5 per cent of the total volume of all outgoing connections; the share of costs accruing to these undertakings is borne by the other undertakings in line with sentence 6. The Bundesnetzagentur stipulates the details of the procedure for the ascertaining and bearing of costs.

Section 52

Transparency, publication of information and service characteristics on cost control; ordinance

(1) Providers of internet access services and publicly available interpersonal telecommunications services which render the provision of services dependent on their business terms and conditions are obliged to publish up-to-date information on

1. current prices and tariffs,
2. the duration of the contract and, in the case of early termination of the contract, accruing fees and rights regarding the termination of bundled offers or parts of them,
3. standard conditions for the access to and use of the services provided by them for end-users and consumers,
4. the service quality including a service to verify the data transmission rate,
5. details on products and services specially intended for users with disabilities and
6. the actual, site-related mobile communications network coverage including a map depicting the current network coverage.

This is without prejudice to Article 4 (1) of Regulation (EU) 2015/2120.

(2) In the context of subsection (1) sentence 1 no. 3, providers of internet access services and publicly available interpersonal telecommunications services are obliged to publish the following:

1. contact information for the undertaking,
2. the scope of the services offered and main characteristics of each service provided including any minimum levels of service quality and any restrictions on use imposed on telecommunications terminal equipment which is provided,
3. tariffs of the services offered with information about the communication volume included in certain tariffs and the current tariffs for additional communication units, numbers or services for which special price conditions apply, access fees, maintenance fees, use fees of all kinds, special and target-group-specific tariffs and additional fees and costs for terminal equipment,
4. their General Terms and Conditions and the durations of contracts offered by them, the preconditions for a change of supplier under section 59, termination conditions and procedures relating to the transfer of telephone numbers or other identifiers,
5. general and supplier-related information about dispute settlement procedures and
6. information about fundamental rights of end-users of internet access services and publicly available interpersonal telecommunications services, especially
 - a) on itemised billing,
 - b) on restricted and, for the end-user, free-of-charge blocks on outgoing connections or of short code dialling data services or, where technically possible, other types of similar applications,
 - c) on the use of pre-paid public telecommunications networks,

- d) on the distribution of costs for a network connection over a lengthy period,
- e) on the consequences of late payment for possible blocks,
- f) on the service characteristics of touch tone and multi-frequency dialling procedures and the display of the caller's telephone number and
- g) on tariff advice.

(3) The information must be provided clearly, comprehensibly and easily accessibly in a machine-readable way and in a format accessible to end-users with disabilities. The Bundesnetzagentur ensures that the providers publish this information and regularly update it.

(4) The Federal Ministry for Economic Affairs and Energy is authorised, in consensus with the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Justice and Consumer Protection, and the Federal Ministry of Transport and Digital Infrastructure, to issue ordinances with the approval of the Bundesrat on overall rules to promote transparency and on the publishing of information and on additional service characteristics on cost control on the telecommunications market.

(5) In the ordinance under subsection (4) more specific requirements can be stipulated regarding the place and form of the information to be published in line with subsections (2) and (3). In the ordinance under subsection (4), providers of internet access services and publicly available interpersonal telecommunications services and operators of public telecommunications networks can be obliged to offer facilities to control the costs of voice communications services, of internet access services or of number-based interpersonal telecommunications services in the case of Article 115 of Directive (EU) 2018/1972. The facility also includes free-of-charge warnings for consumers in the case of anormal or excessive consumer behaviour.

(6) The Federal Ministry for Economic Affairs and Energy can in consensus with the Federal Ministry of Transport and Digital Infrastructure transfer the authorisation to issue an ordinance under subsection (4) by ordinance to the Bundesnetzagentur. An ordinance of the Bundesnetzagentur requires a consensus with the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Justice and Consumer Protection, and the Federal Ministry of Transport and Digital Infrastructure, and the Bundestag.

(7) The Bundesnetzagentur can publish information itself or via third parties which can be of significance for the end-users. In order to promote transparency and to provide information and additional service characteristics on cost control under subsection (4), the Bundesnetzagentur can provide interactive guides or similar technology itself or via third parties if these are not available free of charge or at an appropriate price on the market. For the provision under sentence 3, the use of the information published by operators of public telecommunications networks and providers of internet access services and publicly available interpersonal telecommunications services is free of charge for the Bundesnetzagentur or for third parties.

Section 53

Independent comparison tools

(1) The Bundesnetzagentur ensures that consumers have free-of-charge access to at least one independent comparison tool with which they can compare and assess different internet access services and publicly available number-based interpersonal telecommunications services with regard to

- 1. the prices and tariffs of the services provided for repeated or consumption-based direct monetary payments and
- 2. the service quality if a minimum service quality is offered or the undertaking is obliged to publish such information.

(2) The comparison tool under subsection (1) must

- 1. be operated independently of the providers of the services and thus ensure that the providers are treated equally in the search results;
- 2. unambiguously disclose the owners and operators of the comparison tool;
- 3. contain clear and objective criteria on which the comparison is based;

4. use easy-to-understand and clear language;
5. provide correct and updated information and cite the point in time of the last update;
6. be open to all providers of internet access services and publicly available interpersonal telecommunications services, cover a wide range of services which cover a significant part of the market and, if the information offered does not provide a full overview of the market, make a clear declaration in this regard before the results are shown;
7. provide an effective procedure for the reporting of false information;
8. make prices, tariffs and service quality comparable between services which are available to consumers.

The Bundesnetzagentur can ensure that the comparison tool under subsection (1) no. 1 also covers publicly available number-independent interpersonal telecommunications services.

(3) Comparison tools which meet the requirements under subsection (2) will be certified by the Bundesnetzagentur on application from the provider of the comparison tool. The Bundesnetzagentur can commission a third party with the certification. If such comparison tools are not offered on the market, the Bundesnetzagentur will invite bids to provide the service.

(4) Third parties may use the information published by providers of internet access services or publicly available interpersonal telecommunications services to provide independent comparison tools. The providers must make it possible to use the information free of charge in open data formats.

Section 54

Conclusion and summary of contract

(1) Before a consumer makes a contractual declaration, the provider of publicly available telecommunications services other than transmission services used for the provision of machine-to-machine services must furnish the consumer with the information cited in Article 246 or 246a section 1 of the Introductory Act to the German Civil Code and the information cited in section 55 where this information refers to a service to be provided by it.

(2) The information under subsection (1) must be made available to the consumer in clear and comprehensible fashion and on a durable medium. If it is not possible to provide the information on a durable medium, it must be issued in a document provided by the provider which can easily be downloaded. On request, the information must be provided in a format which is accessible to end-users with disabilities. The consumers must be explicitly informed by the provider about the availability of the information provided and that they can only obtain the information for the purpose of documentation, future reference and unaltered reproduction if they download it.

(3) Before a consumer makes a contractual declaration, the provider will make available to the consumer free of charge a clear and easy-to-read summary of the contract using the template in the Commission Implementing Regulation (EU) 2019/2243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council (OJ L 336 of 30 December 2019, p. 274). The contract summary must display the main elements of the information requirements and include at least the following information:

1. name, address and contact information of the provider and contact information for complaints if this differs from the first set of information,
2. the main features of the individual services to be provided,
3. the respective prices for the activation of the telecommunications services and all repeated or consumption-based fees if the services are provided in return for direct monetary payments,
4. the duration of the contract and the conditions for its extension and termination,
5. the usability of the products and services for end-users with disabilities and
6. with regard to internet access services also a summary of the information required in accordance with Article 4 (1) d) and e) of Regulation (EU) 2015/2120.

If it is not possible for objective technical reasons to make the contract summary available before the consumer makes the

contractual declaration, it must be made available to the consumer without delay following the conclusion of the contract. The effectiveness of the contract depends on the consumer approving the contract in textual form following receipt of the contract summary. If the consumer does not approve the contract, the provider does not have any claim to the replacement value if it has provided the consumer with the telecommunications service in expectation of the approval.

(4) The information cited in subsections (1) and (3) will be the content of the contract unless the parties to the contract have explicitly agreed something different.

Section 55

Information requirements for contracts

(1) Before a consumer makes a contractual declaration, the provider of publicly available telecommunications services other than transmission services used for the provision of machine-to-machine services must furnish the consumer with the following information comprehensively, clearly and in an easily accessible manner:

1. the information to be provided in accordance with Annex VIII Part A of Directive (EU) 2018/1972 and
2. information about compensation for end-users from their providers in case these do not comply with the obligations for a change of supplier or number portability or miss customer service and installation appointments.

(2) Before a consumer makes a contractual declaration, providers of internet access services and publicly available interpersonal telecommunications services must, in addition to the information under subsection (1), provide the information under Annex VIII Part B of Directive (EU) 2018/1972.

(3) Operators of public telecommunications networks are obliged to furnish providers of publicly available telecommunications services with the information they need to fulfil their information requirements if only the operators dispose of this information.

(4) The Bundesnetzagentur can stipulate, following the participation of the affected associations and the undertakings, which minimum information is necessary under subsections (1) and (2). To this end, the Bundesnetzagentur can oblige the providers of publicly available telecommunications services which do not only provide transmission services for machine-to-machine services, or the operators of public telecommunications networks, to collect data on the actual minimum level of the service quality, to undertake their own measurements or to develop tools enabling the end-users to carry out their own measurements. The Bundesnetzagentur publishes a report each year on its website about its surveys and findings, particularly presenting the extent to which

1. the providers of internet access services provide the information which is needed under subsection (2) and under Article 4 (1) of Regulation (EU) 2015/2120,
2. substantial, continuous or regularly repeating deviations between the service quality measured under sentence 2 and the information contained in the contract under Article 4 (1) 1) d) of Regulation (EU) 2015/2120 are ascertained and
3. requirements and measures under Article 5 (1) 1) sentence 2 of Regulation (EU) 2015/2120 are necessary and effective.

Section 56

Duration of contract, termination after tacit extension of contract

(1) The initial duration of a contract between a consumer and a provider of publicly available telecommunications services which consist not only of number-independent interpersonal telecommunications services or transmission services for the provision of machine-to-machine services, may not exceed 24 months. Providers are obliged before the conclusion of the contract to offer a consumer a contract with an initial duration of at most twelve months.

(2) Subsection (1) must not be applied to contracts which only cover the creation of a physical connection without including terminal equipment or services, even if it is agreed with the consumer that the agreed fee can be paid in instalments over a period exceeding 24 months.

(3) If it is provided in a contract between an end-user and a provider of publicly available telecommunications services which consist not only of number-independent interpersonal telecommunications services or transmission services for the provision of machine-to-machine services, that the contract is tacitly extended after the expiry of the initial duration of the contract if the end-user does not terminate the contract in time, the end-user can terminate such a contract following the expiry of the initial duration of the contract at any time, observing a termination period of one month. The provider must inform the end-user in good time before an extension of the contract on a durable medium about

1. the tacit extension of the contract,
2. the possibility to prevent the extension of the contract by means of its timely termination, and
3. the right to terminate an extended contract under sentence 1.

(4) A termination on the grounds of subsection (3) sentence 1 must not impose any costs on the end-user. If an end-user is entitled to terminate a contract before the end of the agreed duration, no compensation may be demanded of the end-user beyond the replacement of the value of retained terminal equipment. The replacement of the value may not be higher than the time-based value of the equipment agreed at the time of the conclusion of the contract or than the residual fees which would have been payable for the service had this not been terminated prematurely. At the latest when the replacement value is paid, the provider must revoke free of charge all restrictive conditions for the use of this terminal equipment in other telecommunications networks.

(5) Providers of an internet access service ensure free of charge that end-users continue to have access to emails during an appropriate period following the end of the contract with the provider of the internet access service which are provided under the provider's email domain, and that end-users can forward these emails to another email address stipulated by the end-user. The Bundesnetzagentur can stipulate the appropriate period under sentence 1.

Section 57

Alteration, reduction and extraordinary termination of contract

(1) If a provider of publicly available telecommunications services has reserved the right by means of General Terms and Conditions to alter a contract unilaterally and if it does alter the contractual conditions unilaterally, the end-user can terminate the contract without complying with a period of notice and without costs unless the alterations are

1. solely to the end-user's advantage,
2. purely administrative in nature and without negative effects on the end-user or
3. prescribed directly by Union or domestic law.

The termination can be declared within three months from the time in which the end-user receives the information from the provider about the alteration of the contract which corresponds to the requirements of subsection (2) sentence 1. The contract can be ended by the termination at the earliest at the time at which the alteration to the contract is to take effect. Sentences 1 to 3 must not be applied to contracts which only cover number-independent interpersonal telecommunications services.

(2) Providers of publicly available telecommunications services must inform end-users at least one month, at most two months, before an alteration to a contract under subsection (1) sentence 1 is to take effect, clearly and comprehensibly on a durable medium about the following:

1. the content and the time of the alteration of the contract and
2. an existing right on the part of the end-user to terminate the contract under subsection (1) sentence 1 to 3.

The Bundesnetzagentur can stipulate the format for the provision of information about alterations to contracts and on the right of termination under subsection (1) sentences 1 to 3.

(3) Providers advise the end-users on the best tariff for the respective end-user with regard to their services. Here, they take account in particular of the scope of the services currently contractually agreed by the end-user, in particular regarding the data volume contained. Providers furnish end-users with information about the best tariff ascertained on this basis at least once a year.

(4) In the case of

1. substantial, continuous or regularly repeated deviations from the speed or other service quality parameters between the actual performance of the internet access services and the service cited by the provider of the internet access services in line with Article 4 (1) a) to d) of Regulation (EU) 2015/2120, which have been ascertained by a supervisory mechanism provided by the Bundesnetzagentur or by a third party commissioned by it, or
2. persistent or frequently occurring substantial deviations between the actual performance and that cited in the contract of a telecommunications service apart from an internet access service,

the consumer is entitled without prejudice to other legal remedies to reduce the contractually agreed fee or to terminate the contract extraordinarily without compliance with a period of notice. In the case of a reduction, the contractually agreed fee must be reduced in line with the extent to which the actual service deviates from the contractually agreed service. If the occurrence of the preconditions of sentence 1 no. 1 or 2 is undisputed or proven by the consumer, the consumer's right to reduce the fee will exist until the provider proves that it is providing the contractually agreed service in an orderly manner. In the case of the complete failure of a service, compensation received under section 58 (3) must be deducted from the reduction. Section 314 (2) of the Civil Code must be applied accordingly to a termination under sentence 1. For the compensation for the provider in the case of a termination under sentence 1, section 56 (4) sentence 2 to 4 applies accordingly.

(5) The Bundesnetzagentur can specify by a general administrative order the undefined concepts of substantial, continuous or regularly repeated deviation in the speed under subsection (4) sentence 1 no. 1 and the persistent or frequently occurring deviations under subsection (4) sentence 1 no. 2 following a hearing of the stakeholders.

Section 58

Fault repair

(1) The consumer can demand of a provider of a publicly available telecommunications service that the provider removes a fault without delay and free of charge unless the fault has been caused by the consumer. Sentence 1 does not apply to number-independent interpersonal telecommunications services or the provision of transmission services for machine-to-machine services. The consumer is obliged to cooperate on the fault repair.

(2) The provider must furnish the consumer with documentation of the receipt of a fault report and the agreement of customer service and installation appointments without delay. If the provider is unable to remove the fault within one calendar day of receipt of the fault report, it is obliged to inform the consumer at the latest during the following day about what measures it has taken and when the fault is likely to be remedied.

(3) If the fault has not been removed within two calendar days following receipt of the fault report, the consumer can demand compensation from the following day for each day of the total failure of the service unless the consumer has caused the fault or its continuation, or the full interruption of the service is based on measures stipulated by law under this Act, Regulation (EU) 2015/2120, by orders of security authorities or by force majeure. The level of the compensation amounts to 5 euros or 10 per cent on the third and fourth day and 10 euros or 20 per cent from the fifth day of the contractually agreed monthly fees in the case of contracts with a constant monthly fee, depending on which amount is higher. To the extent that the consumer claims a reduction under section 57 (4) due to the fault, this reduction must be deducted from any compensation to be paid under this subsection. This is without prejudice to the consumer's right to demand damages beyond the compensation under this subsection. The compensation must be deducted from such damages; such damages must be deducted from the compensation.

(4) If an agreed customer service or installation appointment is missed by the provider, the consumer can demand compensation of 10 euros or 20 per cent of the contractually agreed monthly fee for each missed appointment in the case of contracts with constant monthly fees, depending on which amount is higher, unless the consumer is at fault for the missed appointment. Subsection (3) sentences 4 and 5 apply accordingly.

(5) The Bundesnetzagentur can regulate further details of the fault repair by means of a stipulation. Here, it can in particular also stipulate further deadlines, documentation and information requirements at the beginning and end of the fault repair procedure and requirements imposed on the agreement and documentation of customer service and installation appointments.

Section 59

Change of provider and number portability

(1) Change of provider and number portability take place under the lead of the recipient provider. Providers of internet access services and publicly available number-based interpersonal telecommunications services furnish end-users with sufficient information before and during the change of provider. The donor provider and the recipient provider, as well as the operators of public telecommunications networks, are obliged to cooperate. They ensure that there is no interruption to the service, they do not delay or abuse the change or the number portability and do not carry them out without a contractual agreement between the end-user and the recipient provider.

(2) The providers must ensure in the case of a change of provider that the service of the donor provider to the end-user is not interrupted before the contractual and technical preconditions exist for a change of provider unless this is demanded by the end-user. The recipient provider ensures that the activation of the telecommunications service takes place without delay on the day explicitly agreed with the end-user. Where a change of provider takes place, the end-user's service must not be interrupted for more than one working day. If the change fails to take place within this period, sentence 2 applies accordingly.

(3) The donor provider has a claim to payment of fees by the end-user from the end of the contract until the end of the obligation to provide a service under subsection (2) sentence 2. The level of the fee is oriented to the originally agreed contractual conditions with the proviso that the agreed connection fees are reduced by 50 per cent following the end of the contract unless the donor provider proves that the delay in the change of provider is due to the end-user. The donor provider must in the case of subsection (2) sentence 1 bill the end-user exactly to the day. The recipient provider's claim to payment of fees against the end-user does not take effect before the successful conclusion of the change in provider.

(4) If the end-user's service is interrupted by more than one day in the case of a change of provider, the end-user can demand from the donor provider compensation at the level of 10 euros or 20 per cent of the contractually agreed monthly fee for each additional working day of interruption in the case of contracts with a constant monthly fee, depending on which amount is higher, unless the end-user is at fault for the delay. If an agreed customer service or installation appointment is missed by the donor provider or the recipient provider, the end-user can demand from the respective provider compensation of 10 euros or 20 per cent of the contractually agreed monthly fee for each missed appointment in the case of contracts with constant monthly fees, depending on which amount is higher, unless the consumer is at fault for the missed appointment. Section 58 (3) sentence 4 and 5 is applicable accordingly to compensation owed under this subsection.

(5) Providers of publicly available number-based interpersonal telecommunications services must ensure that end-users can on application retain the telephone number assigned to them (number portability). If porting is necessary for the number portability, telephone numbers can be ported as follows, irrespective of the provider providing the service:

1. in the case of geographic telephone numbers at a certain location and
2. in the case of non-geographic telephone numbers at any location.

Sentences 1 and 2 apply only within the numbering ranges or subranges which are stipulated for a certain service. In particular, the porting of telephone numbers for voice communications services at fixed sites to those without fixed sites and vice versa is inadmissible.

(6) Providers of publicly available number-based interpersonal telecommunications services ensure that end-users who terminate a contract can apply for number portability under subsection (5) up to one month after the end of the contract. The porting of the telephone number and its technical activation take place on the day agreed with the end-user, at the latest during the following working day. If the porting of the telephone number and its technical activation does not take place at the latest during the following working day, the end-user can demand compensation at the level of 10 euros for each day of delay from the provider who is responsible for the delay; section 58 (3) sentence 4 and 5 applies accordingly. Sentence 1 applies to the providers of publicly available mobile communications services with the proviso that end-users can demand the portability of the numbers assigned to them at all times. This is without prejudice to the existing contract between the end-user and the provider of publicly available mobile communications services. The donor provider must assign the end-user a new telephone number on demand.

(7) The Bundesnetzagentur ensures that the prices which are calculated between providers in relation to the porting of the telephone number and the change of provider do not exceed the one-off costs. Any fees are subject to retrospective regulation. Section 46 applies accordingly to the fee regulation. The Bundesnetzagentur also ensures that end-users are not charged any direct fees for the porting of the telephone number.

(8) The Bundesnetzagentur can stipulate further details for the change of provider and number portability, taking account of contract law, technical feasibility and the need to guarantee the continuity of the service to the end-users. This also includes, if technically feasible, a condition to undertake the provision of the carrier profile of the recipient carrier on the SIM card via

air interfaces unless the end-user applies for something different. For end-users who are not consumers and with whom the provider of publicly available telecommunications services has concluded an individual agreement, the Bundesnetzagentur can make arrangements which differ from subsections (1) and (2).

Section 60 Relocation

(1) When a consumer relocates and would like contracts to continue, the provider of publicly available telecommunications services is obliged to provide the contractually agreed service at the consumer's new place of residence without altering the agreed duration of the contract and the other content of the contract to the extent that it provides it there. The provider can demand an appropriate fee for the expenses caused by the relocation, but this may not be higher than the fee envisaged for the switching of a new connection.

(2) If the contractually agreed service is not offered at the new place of residence, the consumer can terminate the contract, complying with a period of notice of one month. The termination can be declared with effect from the time of leaving the place of residence or with effect from a later point in time.

(3) Providers of publicly available telecommunications services and operators of public telecommunications networks work together to ensure that the activation of the telecommunications service at the new place of residence takes place on the day explicitly agreed with the consumer. Section 58 (3) and section 59 (4) apply accordingly.

(4) The Bundesnetzagentur can stipulate the details of the procedure for the relocation, taking account of contract law, technical feasibility and the need to guarantee the continuity of the service to the end-users.

Section 61 Selective blocks to protect against costs, block in the case of delayed payment

(1) End-users can demand from the provider of voice communications services, the provider of internet access services and the provider of the connection to the public telecommunications network that the use of their network access be blocked free of charge on the network side for certain numbering ranges within the meaning of section 3 no. 50 and for short code services to the extent that this is technically feasible. The activation of the blocked call numbering ranges and the short code services can be subject to a fee.

(2) End-users can demand that the provider of publicly available mobile communications services and the provider of the connection block, free of charge and on the network side, the identification of their mobile communications connection for the use and billing of a service provided alongside the connection.

(3) Without prejudice to other statutory provisions, providers of voice communications services and providers of internet access services may only refuse to wholly or partially provide services which are to be provided to a consumer by means of a block in line with the following subsections. This is without prejudice to section 164 (1).

(4) The provider may implement a block due to late payment by the consumer if the consumer is late with payment obligations of at least 100 euros in the case of repeated non-payment and following the deduction of any instalments. The provider must warn the consumer of the impending block at least two weeks in advance in writing and make reference to the possibility for the consumer to seek protection from the courts. When the amount under sentence 1 is calculated, non-enforceable claims to which the consumer has objected in compliance with formal requirements and deadlines and with coherent justification are not included. Disputed non-enforceable claims of third parties are also disregarded. This still applies even if these claims have been assigned to another party.

(5) The provider may implement a block if there are grounds for suspicion that the end-user's connection is being misused or is being manipulated by third parties.

(6) The block must be restricted to the services affected by the delayed payment or misuse. In the case of disputed high invoices for value-added services, the consumer must continue to be granted access to a minimum level of voice communications and broadband internet access services. If the delayed payment affects a service which is part of a bundled

offer, the provider can only block the element of the bundled offer which is affected. A full blockage which also affects incoming voice communications may only be imposed at the earliest one week after the blocking of outgoing voice communications.

(7) The block may only be maintained as long as the reason for the block continues to exist.

Section 62

Invoice content, partial payments

(1) Invoices to end-users must contain the following:

1. the specific designation of the invoiced services,
2. the name and the address at which documents can be served of the invoicing provider,
3. in the case of an invoicing provider headquartered abroad, also the address at which documents can be served of a person authorised to take delivery of documents in Germany, and
4. a national geographic telephone number or a free-of-charge customer service telephone number, email address and website of the invoicing provider.

(2) To the extent that third-party claims or reassigned claims of third parties (third-party providers) are also included, invoices to end-users must additionally contain the following information:

1. the name and the address at which documents can be served of the third-party provider,
2. a national geographic telephone number or a free-of-charge customer service telephone number of the third-party provider.
3. the reference to a website with the following easy-to-find information about the third-party provider:
 - a) email address,
 - b) address at which documents can be served of the third-party provider,
 - c) in the case of a third-party provider headquartered abroad, also the address at which documents can be served of a person authorised to take delivery of documents in Germany.

This is without prejudice to section 65. If the end-user pays the total amount of the invoice to the invoicing provider, this payment will exempt him or her from the obligation to also pay the third-party provider.

(3) If the end-user has not determined otherwise before or during the payment, partial payments to the invoicing provider must be broken down between the claims stated in the invoice in line with their share of the total claim of the invoice.

(4) The invoicing undertaking must point out to the recipient of the invoice in the invoice that the recipient is entitled to raise substantiated objections to individual claims made in the invoice.

(5) Following a hearing of the affected undertakings, expert groups and consumer associations, the Bundesnetzagentur stipulates procedures which the providers of publicly available mobile communications services and the providers of the connection to the public mobile communications service must apply in order to use the identification of a mobile communications connection for the use and billing of a service provided alongside the connection. These procedures are to give the end-users effective protection against a service provided alongside the connection from being used and invoiced against their will. The Bundesnetzagentur publishes the procedure and reviews it in terms of its effectiveness at regular intervals.

Section 63

Calculation of call charges

(1) When calculating the charges, providers of publicly available number-based interpersonal telecommunications services and providers of internet access services are obliged

1. to ascertain the duration and time of metered connections of number-based interpersonal telecommunications services and internet access services, regularly checking this against an official time control system,
2. to ascertain the distance zones of relevance to the charging,
3. to ascertain the transferred data volume in the case of the volume-based charging for connections of number-based interpersonal telecommunications services and internet access services in line with a procedure prescribed under subsection (3) and
4. to subject the systems, processes and technical facilities used to calculate the fees demanded on the basis of the ascertained connection data to a regular check in terms of precision of calculation and compliance with the contractually agreed fees.

(2) The preconditions under subsection (1) no. 1 to 3 and the precision of calculation and correctness of fees of the data processing equipment under subsection (1) no. 4 must be ensured by a quality assurance system or audited once a year by publicly appointed and sworn experts or similar bodies. In order to demonstrate compliance with this provision, the Bundesnetzagentur must be presented with the test certificate of an accredited certification body for quality assurance systems or the test result of a publicly appointed and sworn expert.

(3) The Bundesnetzagentur stipulates in consultation with the Federal Office for Information Security requirements for the systems and procedures for ascertaining the fee for connections charged on the basis of volume under subsection (1) no. 2 to 4 following hearing of the affected undertakings, expert groups and consumer associations.

Section 64 Prepayment

(1) Consumers must have the possibility to receive access to the public telecommunications network on a prepaid basis and to be able to use voice communications services, internet access services or publicly available number-based interpersonal telecommunications services.

(2) Should a service under subsection (1) not be offered, the Bundesnetzagentur will invite bids for the service.

(3) The Bundesnetzagentur can stipulate the details.

(4) In the case of prepaid services, the previous provider refunds the consumer with the residual amount on request following termination of the contract.

Section 65 Entitlement to itemised billing

(1) The end-user can demand at any time with effect for the future an itemised bill from the provider of publicly available number-based interpersonal telecommunications services and from the provider of internet access services; this itemised bill must at least contain the information required for a verification of the sub-totals of the bill. This does not apply to the extent that technical barriers prevent the issuing of itemised bills or that a bill cannot in principle be issued because of the nature of the legal transaction. This is without prejudice to the legal provisions protecting personal data.

(2) The details of what information is generally required for an itemised bill and the form in which this information must at least be provided can be stipulated by the Bundesnetzagentur by an administrative order. The end-user can demand an itemised bill restricted to these stipulations, for which no fee may be charged.

Section 66

Bundled offers

- (1) If a bundled offer of services or of services and terminal equipment offered to consumers comprises at least an internet access service or a publicly available number-based interpersonal telecommunications service (bundled offer), sections 52 and 54 (3), sections 56, 57 and 59 (1) apply to all elements of the offer including those elements which otherwise are not covered by those provisions.
- (2) If an element of the offer under subsection (1) can be terminated in the case of non-compliance with the contractual conditions or non-provision prior to the end of the agreed duration of the contract, the consumer can terminate the contract with regard to all elements of the offer rather than terminating the individual element of the contract.
- (3) Any ordering of additional services or terminal equipment which is provided or sold by the same provider of internet access services or publicly available number-based interpersonal telecommunications services may not extend the original duration of the contract which includes the relevant services or terminal equipment. This does not apply if the consumer explicitly agrees to the extension when ordering the additional services or terminal equipment.

Section 67

Objections

- (1) Providers of publicly available telecommunications services which are neither number-independent interpersonal telecommunications services nor the provision of services for the transmission services used for machine-to-machine services, are obliged to publish information about the complaints procedures provided by them in a format which is accessible to end-users with disabilities. The providers must in particular provide information about the average duration of the processing of complaints of the end-users and the average duration of the processing of complaints on the subjects of service quality, contract implementation and billing. The providers must make it clear how the end-users have access to these procedures. The procedures must take account of the interests of end-users with disabilities by taking place in an accessible format.
- (2) End-users can object to an issued bill within a period of eight weeks following receipt or a debit transfer of prepaid credit. In the case of an objection, the provider must itemise the calls as proof of charges based on the individual call data and undertake a technical verification unless the objection is demonstrably not due to a technical fault. When itemising the calls, the provider must preserve the data privacy of any other users of the connection.
- (3) The end-user can demand within the period of objection to be presented with the evidence for the fees and the results of the technical verification. If the information is not provided within eight weeks of an objection, the claims arising until then expire due to the delay. The claim asserted with the bill is due when the information is provided. The Bundesnetzagentur publishes the procedures which are suitable for the implementation of the technical verification.
- (4) To the extent that, for technical reasons, no traffic data have been stored or, in the case that no objections were made, stored data were deleted following the end of the period regulated in subsection (2) sentence 1 or agreed with the provider or due to legal obligations, the provider will have neither an obligation to provide evidence of the calls provided nor an obligation to provide itemised information under subsection (2). Sentence 1 applies accordingly to the extent that the end-user has demanded that traffic data be deleted or not stored following a clearly recognisable indication of the consequences under sentence 1.
- (5) The provider of publicly available telecommunications services is responsible for proving that it has provided the telecommunications services or the access to the telecommunications network up to the connection point at which the access to the network is provided to the end-user without any technical fault. If the technical verification under subsection (2) reveals faults which may have affected the calculation of the challenged fee to the detriment of the end-user, or if the technical verification is concluded later than two months after the objection by the end-user, it is rebuttably assumed that the calls billed by the respective provider of publicly available telecommunications services were wrongly ascertained.
- (6) To the extent that the end-user proves that the use of services of the provider cannot be attributed to him or her, the provider will not have any claim to fees from the end-user. The claim also ceases to exist to the extent that facts justify the assumption that third parties have influenced the billed connection fee via unauthorised alterations to public telecommunications networks.

Section 68

Dispute settlement

(1) An end-user can apply to initiate an arbitration procedure at the telecommunications dispute resolution panel of the Bundesnetzagentur if there is a dispute between him or her and an operator of public telecommunications networks or a provider of publicly available telecommunications services about a matter relating to the following provisions:

1. sections 51, 52, 54 to 67 or the stipulations made on the basis of these provisions and section 156 or an ordinance under section 52 (4),
2. Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (recast) (OJ L 172 of 30 June 2012, p. 10), as last amended by Regulation (EU) 2017/920 (OJ L 147 of 9 June 2017, p. 1), or
3. Article 4 (1), (2) and (4) and Article 5a of Regulation (EU) 2015/2120.

(2) The dispute settlement procedure ends if

1. the application for dispute settlement is withdrawn,
2. the end-user and operator or provider have reached an agreement and informed the Bundesnetzagentur of this,
3. end-users and operators or providers make a joint statement that the dispute is over,
4. the telecommunications dispute settlement panel of the Bundesnetzagentur informs the end-user and the operator or provider that it was not possible to arrive at an agreement in the dispute settlement procedure, or
5. the telecommunications dispute settlement panel of the Bundesnetzagentur finds that matters under subsection (1) are no longer affected.

(3) The Bundesnetzagentur regulates the further details of the dispute settlement procedure in dispute settlement rules which it publishes. The telecommunications dispute settlement panel of the Bundesnetzagentur must fulfil the requirements under the Consumer Dispute Resolution Act of 19 February 2016 (Federal Law Gazette I. p. 254), amended by Article 2 (3) of the Act of 25 June 2020 (Federal Law Gazette I. p. 1474). The Federal Ministry for Economic Affairs and Energy transmits the communications under section 32 (3) and (4) of the Consumer Dispute Resolution Act to the Central Office for Consumer Mediation.

Section 69

Defensive claims and claims for damages

(1) A provider of publicly available telecommunications services which violates this Act, an ordinance issued on the basis of this Act, an obligation imposed in an assignment on the basis of this Act or an administrative order of the Bundesnetzagentur is obliged to cease this violation in relation to the affected party. The entitlement to cessation already exists when there is the risk of a violation. Affected parties are those who are affected by the violation as end-users or competitors. If the provider acts with intent or by negligence, it is obliged to make good the damage to an end-user or a competitor which has arisen from the violation. Interest must be paid on monetary debt by the provider from the time the damage is caused. Sections 288 and 289 sentence 1 of the Civil Code apply accordingly.

(2) To the extent to which a provider must pay compensation to the end-user on the basis of a provision of this Part or is obliged to pay damages to the end-user or a competitor under the general provisions, this compensation or these damages must be credited against damages under subsection (1); damages under subsection (1) must be credited against the compensation or damages under the general provisions.

Section 70

Limitation of liability

To the extent that an obligation of the provider of publicly available telecommunications services is obliged to replace damage to assets of or to pay compensation to an end-user, the liability is restricted to 12,500 euros per end-user. If the provider's obligation to pay damages or compensation exists in relation to several end-users for the same incident, the liability is restricted to a total of 30 million euros. If the obligation to pay damages or compensation to several entitled parties due to the same incident exceeds the ceiling under sentence 2, the damages or the compensation is reduced pro rata in terms of the ratio of the total of all claims for damages or compensation to the ceiling. The limitation of liability under sentences 1 to 3 does not apply if the obligation to pay damages or compensation has been brought about by intentional or grossly negligent conduct on the part of the provider, and for claims to replacement of the damage caused by the delay in payment of damages or compensation. In derogation of sentences 1 to 3, the level of the liability can be regulated by specific contractual agreement in the case of end-users which are not consumers.

Section 71

Differing agreements and the scope of customer protection

(1) There may be no derogation from the provisions of this Part, or the ordinances issued on the basis of this Part, unless otherwise provided, to the disadvantage of the consumer or the customer.

(2) Anyone who makes available, agrees or offers telecommunications services in the context of a rental or leasing contract or in connection with a rental or leasing contract, or bills the consumer for the cost of such services in the context of a rental or leasing contract or in connection with a rental or leasing contract, must ensure that the provisions of this Part are complied with in relation to the consumer. This obligation to ensure compliance applies only if these are neither number-independent interpersonal telecommunications services nor the provision of services for the transmission services used for machine-to-machine services. Consumers can declare in accordance with section 56 (3) to their landlord or lessor the termination of the use of telecommunications services in the context of the rental or leasing relationship if the rental or leasing relationship has already existed for 24 months or longer.

(3) Section 52 (1) to (3), section 54 (1) and (4), sections 55, 56 (1), sections 58, 60, 61, 66 and 71 (2) must be applied to micro-enterprises or small enterprises and non-profit organisations unless these have explicitly agreed to the dispense with the application of these provisions.

(4) With the exception of sections 51, 68, 69 and 70, the provisions of this Part do not apply to micro-enterprises if they only provide number-independent interpersonal telecommunications services. Micro-enterprises under sentence 1 must inform end-users prior to conclusion of the contract that sections 52 to 67 are not to be applied to the contract.

Section 72

Optical fibre provision fee

(1) The operator of a public telecommunications network can charge the owner of the land a provision fee in line with the following subsections on the basis of a contractual agreement with the owner if the operator

1. equips the building with the permission of the owner of the land with network infrastructure for the first time which consists entirely of optical fibre components,
2. connects the network infrastructure under no. 1 to a very high capacity public network, and
3. ensures the operational readiness of the network infrastructure under no. 1 and the connection to the very high capacity network under no. 2 for the period of provision agreed with the owner of the land.

The owner of a piece of land is equivalent to the possessor of a right equivalent to a piece of land.

(2) The provision fee may be levied in repeated time periods in the period of levying which commences with the construction of the infrastructure within the building (subsection (1) no. 1). The provision fee may amount at most to 60 euros in a year and in total (overall costs) at most to 540 euros per residential unit. It may be levied for at most the duration of up to five years; if this period is insufficient for the refinancing of the overall costs, it can be extended to a maximum of nine years. If the overall costs exceed 300 euros (complex measure), the operator under subsection (1) must present the reasons for this.

(3) In the stipulation of the provision fee, the actual costs distributed equally over the years of the levying period may be considered plus appropriate interest payments on the deployed capital which have arisen for the construction of the network infrastructure within the building (subsection (1) no. 1); these are the costs of the construction of the passive network infrastructure and the optical fibre cable in the building. Costs assumed by a third party or covered with funds from public budgets are not included in the costs under sentence 1.

(4) In each bill from the operator under subsection (1) to the owner of the piece of land, it is necessary to cite

1. the level of the provision fee for the billing period,
2. beginning and end of the levying period,
3. the overall costs,
4. in the case of complex measures in accordance with subsection (2) sentence 4 the presentation of the reasons and
5. in the case of construction of the infrastructure within the building (subsection (1) no. 1) before 1 December 2021
 - a) the date of construction,
 - b) the duration of the agreement giving permission for the construction and
 - c) the time from which the provision fee is first levied.

(5) Following the conclusion of the provision period, the owner of the land is obliged to ensure the operational readiness of the network infrastructure within the building (subsection (1) no. 1).

(6) The operator under subsection (1) must on application permanently furnish providers of publicly available telecommunications services with access to the passive network infrastructure and the optical fibre cables at the final connection point at transparent and non-discriminatory conditions and free of charge for the purpose of supplying end-users. The obligation under sentence 1 applies to the owner of the land following the end of the provision period.

(7) The aforementioned provisions apply to optical fibre infrastructure constructed at the latest on 31 December 2027. A provision fee can also be levied for infrastructure which was constructed in the period from 1 January 2015 until 1 December 2021 if

1. the preconditions of the above subsections are complied with and
2. the owner of the land and the operator under subsection (1) have concluded an agreement permitting the construction on the occasion of the first construction of the network infrastructure which terminates according to the contractual agreement at the earliest on 1 July 2024.

In this case the provision fee must be cut pro rata in accordance with the ratio of time that has passed since the construction of the infrastructure and the agreed duration of the contract permitting the construction under no. 2.

Part 4

Telecommunications terminal equipment and broadcasting transmission

Section 73

Connection of telecommunications terminal equipment

(1) The access to public telecommunications networks at fixed sites must be installed at a suitable place to be agreed with the end-user. This access is a passive network termination point; the public telecommunications network ends at the passive network termination point. For mobile communications networks, the air interface is in principle the network termination point.

(2) The Bundesnetzagentur can permit exceptions from subsection (1) by a general administrative order. In so doing, it takes utmost account of the guidelines drawn up by BEREC under Article 61 (7) of Directive (EU) 2018/1972 and maintains freedom of choice of terminal equipment under Article 3 (1) of Regulation (EU) 2015/2120. The Bundesnetzagentur gives the affected undertakings, expert groups and consumer associations an opportunity to comment before the issuing of a general administrative order.

(3) The operators of public telecommunications networks and the providers of publicly available telecommunications services may not refuse the connection of telecommunications terminal equipment to the public telecommunications network if the telecommunications terminal equipment fulfil the basic requirements under Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility (recast) (OJ L 96 of 29 March 2014, p. 79). They can provide the end-user with telecommunications terminal equipment but may not make its connection and use mandatory. They must provide the end-user with necessary access data and information for the connection of telecommunications terminal equipment and the use of telecommunications services in text form, without being asked and free of charge when the contract is concluded.

(4) Anyone wishing to operate telecommunications terminal equipment in public telecommunications networks must ensure that they are connected correctly.

(5) If a piece of equipment whose conformity with the requirements of section 4 of the Electromagnetic Compatibility Act of 14 December 2016 (Federal Law Gazette I p. 2879), amended by Article 3 (1) of the Act of 27 June 2017 (Federal Law Gazette I p. 1947) has been certified causes serious damage to a telecommunications network, harmful interference to the operation of the network or harmful interference to the radio spectrum, the Bundesnetzagentur can permit the operator of public telecommunications networks to refuse a connection for this equipment, to revoke the connection or to terminate the service. The Bundesnetzagentur informs the Federal Ministry for Economic Affairs and Energy about the measures it has taken.

(6) The operator of public telecommunications networks can in an emergency separate a piece of telecommunications terminal equipment from the network without prior approval only if

1. the protection of the telecommunications network requires the immediate switching off of the telecommunications terminal equipment and
2. the user can be offered an alternative solution without delay and free of charge for the user.

(7) The operator of public telecommunications networks informs the Bundesnetzagentur without delay about the separation of a piece of telecommunications terminal equipment from the telecommunications network.

(8) The Bundesnetzagentur takes the necessary measures with regard to operators of public telecommunications networks in order to ensure the connection of telecommunications terminal equipment if the operators

1. refuse to connect telecommunications terminal equipment to their telecommunications networks or
2. have taken connected telecommunications terminal equipment from the telecommunications network without the preconditions of subsection (5) or (6) existing.

Section 74

Descriptions of interfaces of the operators of public telecommunications networks

(1) Operators of public telecommunications networks are obliged

1. to provide and publish appropriate and precise technical specifications of their network access interfaces and to inform the Bundesnetzagentur directly of these and
2. to regularly publish all updated specifications of these network access interfaces and to inform the Bundesnetzagentur directly of these.

The obligation under sentence 1 no. 1 also applies to every technical alteration of an existing interface.

(2) The descriptions of interfaces must be sufficiently detailed to permit the designing of telecommunications terminal equipment which is able to use all the services provided via the corresponding interface. The intended use of the interfaces

must be cited. The specifications of the interfaces must contain all the information needed for the manufacturers to be able to carry out the respective tests regarding the interface-related basic requirements which apply to the respective telecommunications terminal equipment, according to their own choice.

(3) The obligation to publish under subsection (1) is fulfilled if the information is published in the official journal of the Bundesnetzagentur. If the publication takes place elsewhere, the operator of public telecommunications networks must inform the Bundesnetzagentur of the citation without delay. In this case, the Bundesnetzagentur publishes the citation in its official journal or on its website.

(4) If it is unreasonable to publish the entire interface specifications due to their volume, it is sufficient to publish a communication which at least provides information about the nature and purpose of the interface and contains a reference to ways to obtain the comprehensive interface description. The operator of public telecommunications networks ensures that the interface descriptions are provided on demand without delay to the interested parties and the interested parties are not treated differently in terms of time or substance or in terms of the cost of the purchase of the interface descriptions. A fee levied for the purchase of interface descriptions may only be levied at the level of the special costs caused by this.

(5) The operator of public telecommunications networks may only offer services which are to be provided via the interfaces published under subsection (1) if the interface description or the citation of the interface description has previously been published in the official journal of the Bundesnetzagentur.

Section 75

Interoperability of television and radio equipment

(1) Every digital television receiver which is offered for sale, rental or otherwise must, to the extent that it contains an integrated screen whose visible diagonal exceeds 30 centimetres, be equipped with at least one interface socket which has been accepted by a recognised European standardisation organisation or which corresponds to a common, sector-wide, open specification and permits the connection of peripheral equipment and the possibility of conditional access.

(2) Every digital television receiver which is offered for sale, rental or otherwise, which is capable of receiving and decoding digital television signals, must have the capability to

1. decode signals which correspond to a uniform European scrambling algorithm as it is administered by a recognised European standardisation organisation;
2. display signals which are transmitted unscrambled as long as in the case of rented equipment the renter complies with the conditions of the rental contract.

(3) Every car radio which is installed in a newly marketed vehicle with at least four wheels which is designed and built to carry passengers must contain a receiver in line with the state of the art which at least directly permits the reception and reproduction of radio services transmitted by digital terrestrial radio. In the case of receivers which correspond to the harmonised standards or parts of them, whose citations have been published in the Official Journal of the European Union, conformity with the requirement in sentence 1 which corresponds to the relevant standards or parts of them, is assumed to exist.

(4) Each radio set which is intended for consumers and which is first offered for sale, rental or otherwise on the market and intended predominantly for the reception of sound broadcasting, which can display the names of channels and is not subject to subsection (3), must contain a receiver which at least permits the reception and reproduction of digital radio services. The following are exempted from this:

1. kits for radio equipment,
2. equipment which is part of a radio device of the amateur radio service and
3. equipment in which the radio receiver is a mere auxiliary function.

(5) Providers of digital television services must take back from their end-users digital television receivers which they provide to their end-users in connection with the use of the digital television services free of charge and without difficulty. This does not apply to the extent that the device is fully interoperable with the digital television services of the provider to whom the end-user has switched. Compliance with the interoperability requirements is assumed to exist in the case of digital

television receivers which at the time of the end of the contract correspond to the relevant harmonised standards or parts of them, the citations of which are published in the Official Journal of the European Union. This is without prejudice to the provisions of the Electrical and Electronic Equipment Act.

Section 76

Conditional access systems

(1) If holders of commercial rights to conditional access systems decide to award licences to manufacturers of digital television receivers or to third parties which demonstrate a justified interest, this must take place at conditions which offer equality of opportunity and are appropriate and non-discriminatory. The criteria of sections 37 and 46 apply. Here, the holders may give appropriate consideration to technical and commercial factors. The award of the licence may however not be made dependent on conditions which negatively affect the following:

1. the installation of a joint interface to connect to other conditional access systems or
2. the installation of specific components of another conditional access system for reasons of the transaction security of the content to be protected.

(2) Providers and users of conditional access systems must

1. make it possible for all broadcasters to use their necessary technical services in order to use their systems and the information necessary for this at conditions which offer equality of opportunity and are appropriate and non-discriminatory,
2. to the extent that they are also responsible for the billing system with the end-users, hand out to the end-user a list of fees before the conclusion of a contract with the end-user requiring the payment of fees,
3. have separate accounts for their activity as the provider of these systems,
4. before the take-up and any change to their service notify to the Bundesnetzagentur the information on nos. 1 to 3 and the individual services offered to end-users and the fees demanded for this.

(3) The Bundesnetzagentur informs the competent body under Land law without delay about the notification under subsection (2) no. 4. If the Bundesnetzagentur or the competent body under Land law arrives at the finding for its field of competence on the basis of the notification within a period of two months that the service does not correspond to the requirements under subsection (2) no. 1 to 3, it will demand changes to the service. If the requirements cannot be attained despite changes, or if the changes are not made despite the demand, it will prohibit the service.

(4) If one or several providers or users of conditional access systems does or do not dispose of significant market power, the Bundesnetzagentur can alter or revoke the conditions under subsections (2) and (3) with regard to the affected party if

1. the prospects of effective competition on the retail markets for the transmission of broadcasting signals and for conditional access systems and other associated devices are not negatively influenced by this and
2. the competent body under Land law has found that the capacity stipulations and transmission obligations under Land law are not negatively influenced by this.

Sections 11 to 16 apply accordingly to the procedure under sentence 1.

Section 77

Dispute settlement

(1) The parties entitled or obliged under sections 75 and 76 can jointly appeal to the dispute settlement body under the following subsections in order to settle unresolved disputes relating to the application of these provisions. The appeal takes place in writing or electronically. The Bundesnetzagentur decides within two months.

(2) The dispute settlement body under subsection (1) is set up at the Bundesnetzagentur. It consists of one presiding member and two associate members. The Bundesnetzagentur regulates the establishment and composition of the dispute settlement body and issues rules of procedure. The establishment and composition of the dispute settlement body and the rules of procedure must be published by the Bundesnetzagentur.

(3) The dispute settlement body under subsection (1) gives the competent body under Land law the opportunity to comment in the context of this procedure. To the extent that the competent body under Land law raises objections under media legislation, it will take a corresponding decision within the prescribed time frame. Both decisions can take place in a merged procedure.

Part 5

Information about infrastructure and network expansion

Section 78

Tasks of the single information point of the Federation

(1) In order to create and maintain transparency with regard to the expansion of public telecommunications networks, the single information point of the Federation sets up and operates a technical instrument in the shape of a data portal providing information about the areas of

1. infrastructure in line with section 79,
2. broadband expansion in line with section 80,
3. future network expansion in line with section 81,
4. construction sites in line with section 82,
5. real estate in line with section 83.

(2) The tasks of the single information point of the Federation are assumed by the Federal Ministry of Transport and Digital Infrastructure. The Federal Ministry of Transport and Digital Infrastructure can fully or partially transfer the tasks of the single information point of the Federation to agencies in its portfolio or agencies subject to its operational oversight or entrust third parties with the carrying out of the tasks to the extent that this is legally admissible.

(3) The information can also be used for general planning and promotional purposes and for other purposes determined by this Act.

(4) In the case of geographical surveys needed for the tasks cited in subsection (1), the single information point of the Federation works together with the Bundesnetzagentur to the extent that the Bundesnetzagentur does not carry out the respective task itself and this can be of interest for its tasks.

Section 79

Information about infrastructure

(1) Information about infrastructure covers

1. an area-based overview, for planning purposes, of facilities which can be used for telecommunications purposes under subsections (2) to (4),
2. detailed information under section 136 (3) for the shared use of passive network infrastructure of public supply

networks in line with sections 138 to 141, to the extent that this information has been made available to the single information point of the Federation in line with section 136 (5), and

3. detailed information under section 153 (3) for the shared use of other physical infrastructure to construct or connect small-area wireless access points in line with section 152, to the extent that this information has been made available to the single information point of the Federation in line with section 153 (5).

(2) The single information point of the Federation demands from owners or operators of public supply networks which dispose of facilities which can be used for telecommunications purposes that information which is necessary for the purposes under subsection (1) no. 1 on the nature, present use, actual availability and geographical location of the site and the networks of these facilities. The single information point of the Federation demands from owners or operators of other physical infrastructure which is suitable for the construction and connection of small-area wireless access points that information which is necessary for the purposes under subsection (1) no. 1 on the nature, present use, actual availability and geographical location of the site and the networks of this other physical infrastructure. The facilities under sentence 1 particularly include all passive network infrastructure and other physical infrastructure.

(3) The single information point of the Federation does not include information received under subsection (2) in the overview under subsection (1) no. 1 to the extent that there are specific indications that

1. inspection under subsection (4) jeopardises the security and integrity of the facility or the other physical infrastructure or public safety/security or public health,
2. inspection under subsection (4) violates confidentiality in accordance with section 148,
3. parts of infrastructure are affected which have been designed by an act or on the basis of an act as critical infrastructure and demonstrably merit particular protection and are of significance for the functioning of the critical infrastructure, or
4. parts of public supply networks or other physical infrastructure are affected which are used by the Federation to implement secure communication by agencies.

In these cases, information within the meaning of section 136 (3) no. 3 and section 153 (3) no. 3 must be included for the respective areas in which the facilities or the other physical infrastructure are located.

(4) The single information point of the Federation grants to the parties involved in the expansion of public supply networks in line with the conditions governing inspection under subsection (5) the right to inspect the overview under subsection (1) to the extent that the expansion projects are to establish facilities which can be used for telecommunications purposes. The parties involved in the expansion of public supply networks particularly include

1. territorial authorities,
2. owners and operators of public supply networks,
3. the contractors of territorial authorities or owners and operators of public supply networks.

The Federal Ministry of Transport and Digital Infrastructure and territorial authorities have, for general planning and promotional purposes and to fulfil tasks under this Act, the right to

1. inspect the overview under subsection (1) in line with the inspection conditions under subsection (5), and
2. use the inspected information for the aforementioned purposes.

(5) The single information point of the Federation regulates the details of the inspection in inspection conditions. These must take account in particular of the sensitivity of the stored data and the expected administrative burden. The parties entitled to inspect the overview must uphold confidentiality under section 148.

Section 80

Information about broadband expansion

(1) Information about the broadband expansion is based on a geographical survey of the local availability of public telecommunications networks to be undertaken at regular intervals, but at least once a year, by the single information point

of the Federation.

(2) The information about the broadband expansion comprises a territorial and budget-related overview of the local availability of public telecommunications networks and information about areas in which the expansion of public telecommunications networks is publicly funded to the extent that this information is available to the single information point of the Federation. The overview must contain sufficient details about local features and adequate information about the service quality and its parameters.

(3) The single information point of the Federation must ensure that the information on the broadband expansion is treated confidentially, preserving operational and commercial secrets.

(4) The single information point of the Federation provides end-users with an information tool so that they can ascertain the availability of network connections in different areas at a level of detail that is appropriate to help them select the operator or service provider. Sentence 1 does not apply if an information tool that meets the requirements of sentence 1 is available on the market.

Section 81

Information about future network expansion

(1) Information about future network expansion for the area of mobile communications is based on geographical surveys which the single information point of the Federation carries out for the purpose of compiling an overview of the future expansion of the public telecommunications networks intended for mobile communications. The surveys under sentence 1 cover information which shows the sites at which a mobile communications network operator intends to expand the mobile communications network operated by it within 12 months of the respective survey for which the map depiction under section 52 (1) sentence 1 no. 6 shows that there is no network coverage there with mobile communications technologies of the third, fourth or fifth generation.

(2) The single information point of the Federation conducts the surveys at regular intervals, but at least at intervals of six months from the first survey.

(3) The information to be collected under subsection (1) comprises:

1. geographical site coordinates or, to the extent that no building permit has been applied for for a specific site, sufficiently precise information about defined areas for site planning, and
2. information about the expected network coverage.

The Federal Ministry of Transport and Digital Infrastructure stipulates in consensus with the Federal Ministry for Economic Affairs and Energy requirements for the technical details of the objects cited in subsection (1) sentence 2 and sentence 1 of this subsection in Technical Guidelines published in the Federal Ministry of Transport Gazette.

(4) The single information point of the Federation can on demand from the Federal Ministry of Transport and Digital Infrastructure produce an overview for a stipulated period of time for the future local availability of other public telecommunications networks on the basis of the geographical survey if the single information point of the Federation identifies a need for such a survey and justifies this need.

(5) Information about the future network expansion within the meaning of subsection (1) comprises all relevant information about planned network expansion measures including the network expansion plans of all undertakings and public bodies. The information collected must correspond to the requirements of section 80 (2) sentence 2 and be treated in accordance with section 80 (3). Sentences 1 and 2 apply accordingly for information needed for the overview of the future availability of other public telecommunications networks within the meaning of subsection (4).

(6) The single information point of the Federation can allow territorial authorities to inspect the overview under subsections (1) and (4) for general planning and promotional purposes. Further details are stipulated by the single information point of the Federation in inspection conditions which ensure that the information is treated confidentially, maintaining public safety/security and maintaining operational and commercial secrets.

Section 82

Information about construction sites

Information about construction sites is information under section 142 (3) for the coordination of construction work on public supply networks in accordance with section 143 to the extent that it has been made available for this purpose to the single information point of the Federation under section 142 (5) and (6).

Section 83

Information about real estate

(1) Information about real estate is information about real estate, pieces of land, infrastructure and other physical infrastructure which are suitable for the purposes of the expansion of mobile communications networks and owned by the Federation, a Land or a municipality.

(2) The single information point of the Federation demands from the owners cited in subsection (1) that information which is needed for the provision of information about real estate under section 78 (1) no. 5 for the data portal under section 78 (1). Section 79 (3) applies accordingly.

(3) The data portal operated by the single information point of the Federation in accordance with section 78 (1) permits inspection of the information on real estate within the meaning of subsection (1) in line with inspection conditions maintained by the single information point of the Federation. If the tasks of the single information point of the Federation are not assumed directly by the Federal Ministry of Transport and Digital Infrastructure, the inspection conditions will need to be approved by the Federal Ministry of Transport and Digital Infrastructure.

Section 84

Areas with an expansion deficit

(1) For general planning and promotional purposes, the single information point of the Federation can designate clearly defined geographical areas for which it is established on the basis of the information covered by sections 80 and 81 that during the period of time covered by the information about future network expansion

1. no undertaking and no public body is expanding or planning to expand a very high capacity network and
2. no significant modernisation or expansion of the telecommunications network is planned with the aim of higher download speeds.

The single information point of the Federation publishes the areas it has designated in accordance with sentence 1.

(2) The single information point of the Federation can request undertakings and public bodies to announce their intention to expand very high capacity networks within the area designated in accordance with subsection (1) during the relevant period covered by the outlook. If an undertaking or a public body then announces its intention within the meaning of sentence 1, the single information point of the Federation can call on other undertakings and public bodies to announce any intention on their part

1. to build up very high capacity networks in this area or
2. to undertake a significant modernisation or expansion of the telecommunications network with the aim of higher download speeds.

The single information point of the Federation states what information must be contained in the announcement of intent so that it at least corresponds to the requirements of section 80 (2) sentence 2. The single information point of the Federation informs all undertakings or public bodies on request whether the designated area is being supplied or will probably be supplied by a next-generation network, citing the respective download speeds, according to the information collected in accordance with sections 80 and 81 to the extent that this information is available to the single information point of the Federation.

(3) Measures under subsection (2) are carried out in line with an efficient, objective, transparent and non-discriminatory procedure from which no undertaking is excluded from the outset.

Section 85

Publication and forwarding of information

(1) The single information point of the Federation publishes the information from the geographical survey in accordance with section 80 to the extent that the information is not available on the market. In so doing, it must preserve operational and commercial secrets and comply with the Act on the Re-use of Information of 13 December 2006 (Federal Law Gazette I p. 2913), amended by Article 1 of the Act of 8 July 2015 (Federal Law Gazette I p. 1162). This is without prejudice to inspection rights under this Act.

(2) The single information point of the Federation gives the information under sections 79 to 83 on request to other public bodies responsible for the fulfilment of tasks under this Act to the extent that the requesting body upholds the same level of confidentiality and protection of operational and commercial secrets as the single information point of the Federation. The parties which have provided the information must be informed about the possibility to forward the information under sentence 1. Under the preconditions of sentences 1 and 2, the information is made available on request to BEREC and the Commission.

Section 86

Authorisation to issue ordinances

The Federal Ministry of Transport and Digital Infrastructure is authorised to determine in consensus with the Federal Ministry for Economic Affairs and Energy by ordinance with the approval of the Bundesrat the form, the technical format and the level of detail, for example in terms of location and technical features, of the information within the meaning of section 78 (1) which is to be provided to the single information point of the Federation.

Part 6

Spectrum management

Section 87

Aims of spectrum regulation

(1) The aims of spectrum regulation are

1. the efficient administration of the spectrum for telecommunications networks and services in the Federal Republic of Germany in compliance with section 2 taking account of the fact that the spectrum is a public asset of high societal, cultural, economic, security and defence value,
2. the allocation, usage and assignment of spectrum in accordance with objective, transparent, pro-competitive, non-discriminatory and appropriate criteria,
3. compliance with the relevant international agreements, including the Radio Regulations and
4. the promotion of the harmonisation of spectrum usage for telecommunications networks and services in the European Union in order to ensure their efficient and uninterrupted use and in order to attain advantages for the consumers such as competition, economies of scale and interoperability of services and networks.

(2) In pursuing the aims cited in subsection (1), the Bundesnetzagentur acts in compliance with section 198 and Decision No. 676/2002/EC, not least by

1. progressing the supply of the Federal Republic of Germany with high-performance, efficient, nation-wide and uninterrupted wireless voice and data services for all end-users and in particular the supply of broadband and the usable service quality in rural areas and ensuring end-to-end, uninterrupted access to voice and broadband data public mobile communications services if possible by 2026 for all end-users, at least along federal trunk roads, and also in the secondary road network and on all railways and waterways,
2. facilitating the rapid development of new wireless communications technologies and applications in the European Union, if appropriate also via a cross-sectoral approach,
3. in the interest of long-term investments ensuring predictability and uniformity in the issuing, alteration, restriction and withdrawal of spectrum assignments,
4. taking appropriate preventative and remedial measures for the purpose of avoiding cross-border or national interference to wireless technology,
5. promoting spectrum sharing by the same or different types of spectrum usages in compliance with competition law,
6. applying the most suitable type of assignment in accordance with section 91 involving the least possible effort so that the spectrum can be used as flexibly, together, and efficiently as possible,
7. applying rules for the issuing, transfer, extension, alteration and withdrawal of spectrum usage rights which are stipulated in a clear and transparent manner in order to ensure legal certainty, uniformity and predictability of regulation and
8. working to ensure that spectrum assignments in the European Union are made in a uniform and predictable manner in terms of the protection of the population from damage to health by electromagnetic fields, whereby it takes account of Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 199 of 30 July 1999, p. 59).

Section 88

Tasks

(1) In order to ensure an efficient and undisrupted usage of spectrum and giving consideration to the regulatory aims of section 2 and the aims of spectrum regulation in accordance with section 87, the respectively competent authorities

1. assign frequency bands in the spectrum ordinance under section 89 and divide them into spectrum usages in the spectrum plan,
2. assign spectrum and
3. monitor spectrum usages.

(2) The Bundesnetzagentur issues orders regarding spectrum usages in the context of the operation of radio equipment on foreign ground, water and aerial vehicles spending time in the area of validity of this Act.

(3) For spectrum usages which fall under the portfolio of the Federal Ministry of Defence, the Federal Ministry of Transport and Digital Infrastructure establishes a consensus with the Federal Ministry of Defence.

Section 89

Authorisation to issue ordinances

(1) The Federal Government is authorised to stipulate spectrum allocations for the Federal Republic of Germany and further related stipulations in a spectrum ordinance. This must take account of the interests of internal and external security. The spectrum ordinance requires the approval of the Bundesrat. The parties affected by spectrum allocations are to be involved in

the preparation. The spectrum ordinance can include rules on how to proceed with spectrum for analogue very high frequency radio which becomes free.

(2) The spectrum allocation must take account of the relevant international agreements, including the Radio Regulations, European harmonisation and technological advances. If the spectrum allocation also affects provisions on spectrum usages and related more detailed stipulations, restrictions are only admissible for the reasons cited in Article 45 (4) and (5) of Directive (EU) 2018/1972.

(3) The Federal Government is authorised to stipulate in a special spectrum ordinance which does not require the approval of the Bundesrat spectrum allocations and other related stipulations to the extent that they are needed to ensure the ability of the Bundeswehr and the authorities and organisations with security tasks to assume those tasks in a state of tension and defence. The rules of the special spectrum ordinance under sentence 1 apply only when a state of tension is stipulated under Article 80a of the Basic Law or a state of defence is stipulated under Article 115a of the Basic Law.

Section 90

Spectrum plan

(1) The Bundesnetzagentur divides the frequency bands into spectrum usages and related conditions of usage (spectrum plan) on the basis of the spectrum allocations and stipulations in the spectrum ordinance under section 89 (1). In so doing, it involves the affected federal and Land authorities, the affected groups and the public and takes account of the regulatory aims of section 2 and the aims of spectrum regulation in accordance with section 87. The Bundesnetzagentur establishes a consensus with the relevant supreme Land and federal authorities to the extent that

1. the capacities available for the field of public safety/security or
2. the capacities available for broadcasting on the basis of the stipulations under broadcasting legislation for the transmission of broadcasting in the field of competence of the Länder

are affected. This is without prejudice to section 88 (3).

(2) If the Bundesnetzagentur finds following the expiry of three years after the stipulation of a spectrum usage that a spectrum assignment within the meaning of the stipulation of the spectrum plan has not taken place, it can, following a hearing of the affected parties, revoke or alter the corresponding stipulation in line with the stipulations in the spectrum ordinance under section 89 (1). Subsection (1) sentence 3 does not apply.

(3) The spectrum usage and the conditions of usage are described by technical, operational or regulatory parameters. These parameters can also include information about restrictions on usage and on planned usages.

(4) The spectrum plan and its amendments are to be published.

(5) Spectrum for wireless network access to telecommunications services must be defined in such a way that all the technologies envisaged for this can be used and all types of telecommunications services are admissible. This is without prejudice to subsection (6).

(6) Section 89 (2) applies accordingly.

Section 91

Spectrum assignment

(1) Each spectrum usage requires a prior spectrum assignment unless this Act stipulates otherwise. The spectrum assignment takes place for specific purposes in line with the spectrum plan and in a non-discriminatory manner on the basis of understandable and objective procedures. A spectrum assignment is not required if the spectrum usage rights can be exercised on the basis of another statutory provision. To the extent that the usage of spectrum which has already been assigned to others is necessary for authorities to exercise their statutory powers and this usage is not expected to create any significant impairment of usage, the usage is permitted in compliance with the framework conditions stipulated by the Bundesnetzagentur in consultation with the users and the right holders without spectrum assignment being required for this.

(2) Spectrum is assigned generally ex officio as general assignments by the Bundesnetzagentur for use by the public or a group of people defined or definable by general characteristics. The general assignment must be published.

(3) To the extent that a general assignment is not possible, spectrum is assigned individually on application by the Bundesnetzagentur for individual spectrum usages to natural persons, legal persons or associations of persons to the extent that a right to this can exist for them. In the choice between general and individual assignment, the Bundesnetzagentur takes into account

1. the specific characteristics of the relevant radio spectrum,
2. the need for protection against interference to wireless technology,
3. as far as is necessary the establishment of reliable conditions for spectrum sharing,
4. the need to ensure the technical quality of the communications and the services,
5. aims of general interest in compliance with Union law and
6. the need to uphold the efficient usage of radio spectrum.

The decision on the granting of rights of usage which are destined for the supply of telecommunications services must be published.

(4) The application for individual assignment under subsection (3) must be made in writing or electronically. The application must describe the area in which the spectrum is to be used. The fulfilment of the subjective preconditions for the assignment of spectrum must be explained with a view to efficient and undisrupted spectrum usage and further conditions under Annex I Part D of Directive (EU) 2018/1972. The Bundesnetzagentur can demand that the applicant present a spectrum usage concept explaining how it intends to ensure efficient and undisrupted spectrum usage in accordance with sentence 3. The Bundesnetzagentur decides on complete applications within six weeks. This deadline is without prejudice to international agreements in force about the usage of spectrum and orbital positions.

(5) Spectrum is assigned if

1. it has been stipulated for the envisaged usage in the spectrum plan,
2. it is available,
3. compatibility with other spectrum usages exists and
4. efficient and undisrupted spectrum usage by the applicant is ensured.

A spectrum assignment can be wholly or partially denied if the usage intended by the applicant is not compatible with the regulatory aims under sections 2 and 87. If interests of the Länder are affected in the case of the transmission of broadcasting in the field of competence of the Länder, consultations must be held with the competent Land authority on the basis of the stipulations of broadcasting legislation.

(6) The applicant has no entitlement to a specific individual frequency.

(7) The holder of the spectrum assignment must notify the Bundesnetzagentur of the beginning and end of the spectrum usage without delay. Alterations of names, addresses, direct or indirect alterations to ownership structures, also in associated undertakings, and identity-preserving transformations must also be notified to the Bundesnetzagentur.

(8) If spectrum usage rights are transferred due to singular or universal succession, the holder of the spectrum assignment must apply without delay to the Bundesnetzagentur in writing or electronically for this alteration to the spectrum assignment, providing corresponding proof. In these cases, spectrum can continue to be used until a decision is taken on the application for the alteration. The application for alteration must be accepted if

1. the preconditions for spectrum assignment under subsection (5) exist,
2. there are no concerns about a distortion of competition on the objectively and spatially relevant market and
3. efficient and undisrupted spectrum usage is ensured.

If spectrum assignments are no longer used, the holder of the spectrum assignment must declare its renunciation of it without delay in line with section 102 (8). If a legal person to whom spectrum has been assigned is dissolved without there being a legal successor, the party undertaking the dissolution must return the spectrum. If a natural person dies without an heir wishing to continue using the spectrum, it must be returned by the heirs or the administrator of the estate.

(9) If spectrum is not sufficiently available for spectrum assignments or if several applications are made for certain frequencies, the Bundesnetzagentur can order that the assignment of the spectrum must be preceded by an assignment award procedure under section 100. This is without prejudice to the preconditions for an individual assignment under subsection (5). The affected groups must be heard before the decision. The Bundesnetzagentur's decision must be published.

Section 92

Imposition of time limit on and extension of the spectrum assignment

(1) Spectrum is generally assigned for a limited period of time. The period of time must be appropriate for the relevant usage and take appropriate account of the amortisation of the investment needed for this.

(2) An assignment which is limited in time must be extended if the preconditions for a spectrum assignment under section 91 (5) exist. This is without prejudice to the provisions in sentence 3 and subsection (3). Section 91 (9) applies accordingly with the proviso that in the case of harmonised spectrum the following must in particular be considered in the exercise of discretion in accordance with section 91 (9) sentence 1:

1. the fulfilment of the aims stipulated in sections 2 and 87 and of aims of the public good in accordance with the law of the European Union or of national law,
2. the implementation of a technical implementation measure under Article 4 of Decision No 676/2002/EC,
3. the ensuring of the orderly and timely compliance with the conditions attached to the relevant spectrum usage right,
4. the need to promote competition and to avoid distortions of competition in compliance with section 105,
5. the need to make the use of the spectrum more efficient in view of the development of technology and the markets,
6. the need to prevent serious disruption to the services and
7. the demand for spectrum from undertakings other than those that dispose of usage rights in the relevant frequency band.

(3) Harmonised spectrum for wireless broadband services is assigned for at least 15 years. In derogation of sentence 1, the Bundesnetzagentur can stipulate a shorter time period for

1. limited geographical areas with extremely patchy or no access to high-speed networks,
2. certain short-term projects,
3. usages of the spectrum which can coexist with wireless broadband services whilst observing the aims of Article 45 (4) and (5) of Directive (EU) 2018/1972,
4. the alternative usage of the spectrum in accordance with section 98 or
5. the adaptation of the period of validity of a spectrum usage right to the period of validity of other spectrum usage rights.

The assignment must be extended if the general criteria stipulated under section 99 (1) sentence 1 no. 2 in conjunction with sentence 6 are met. The assignment must be extended appropriately so that the regulatory framework for investment in network infrastructure is predictable for the usage of such spectrum during a period of at least 20 years for the holder of the spectrum usage rights. This is without prejudice to the provisions in subsection (2). The general criteria of the extension refer to

1. the ensuring of efficient and undisrupted usage of the relevant spectrum,
2. the attainment of the aims of section 87 (2) no. 1 and 2,
3. the protection of human life,
4. the ensuring of public safety/security and order,
5. the upholding of national security and defence interests and

6. the ensuring of competition based on equal opportunities.

(4) The Bundesnetzagentur decides in good time about the extension before the expiry of the validity. For this purpose, the Bundesnetzagentur examines ex officio or on application from the right holder the need for such an extension. In the case of a time limit on the assignment of harmonised spectrum, the Bundesnetzagentur decides about the extension on application from the right holder at the earliest five years before the expiry of the validity of the relevant rights. In the case of a time limit on the assignment of harmonised spectrum for wireless broadband networks and services, the Bundesnetzagentur undertakes an objective and forward-looking evaluation of the compliance with the criteria stipulated in accordance with section 99 (1) sentence 1 no. 2 in conjunction with subsection (3) sentence 6 at the latest two years before the expiry of the relevant rights.

In the case of the extension of a spectrum assignment, the Bundesnetzagentur can retain, revoke, alter or restipulate the type and scope of the spectrum usage and side provisions under section 99 in order to uphold the regulatory aims under sections 2 and 87. In the case of an extension under subsection (3), the type and scope of the spectrum usage and side provisions are to be retained unless their retention is no longer necessary or an alteration or new imposition is required to ensure the regulatory aims of sections 2 and 87.

Section 93 **Shared spectrum assignments**

The Bundesnetzagentur can cooperate with competent authorities of other Member States of the European Union and with the Radio Spectrum Policy Group in order to stipulate common aspects of a spectrum assignment and if necessary to jointly undertake an assignment award procedure in accordance with section 100, taking account of the interests asserted by the market participants.

Section 94 **Time-based coordination of the spectrum assignments**

(1) The Bundesnetzagentur establishes the conditions for the assignment of harmonised spectrum without delay, but at the latest 30 months after the stipulation of harmonised conditions by technical implementation measures in accordance with Decision No 676/2002/EC, or without delay after the revocation of a decision by which the Bundesnetzagentur has assigned spectrum in exceptional cases for alternative usage in accordance with section 98.

(2) The Bundesnetzagentur can exceed the deadline in accordance with subsection (1) for a certain frequency band

1. if this is justified by the restriction of the usage of the relevant frequency band due to the aims of general interest in accordance with Article 45 (5) a) and d) of Directive (EU) 2018/1972,
2. if open questions of cross-border coordination exist with states outside the European Union which result in interference to wireless technology to the extent that the European Union has been asked to provide support in accordance with Article 28 (5) of Directive (EU) 2018/1972,
3. to uphold national security and defence interests or
4. in the case of force majeure.

The Bundesnetzagentur reviews the exceeding of the deadline in accordance with sentence 1 at the latest every two years.

(3) The Bundesnetzagentur can exceed the deadline in accordance with subsection (1) for a certain frequency band to the extent necessary by up to 30 months in the following cases:

1. if open questions of cross-border coordination exist between Member States of the European Union which result in interference to wireless technology to the extent that all the necessary measures in accordance with Article 28 (3) and (4) of Directive (EU) 2018/1972 have been taken or
2. in the event of technical difficulties with the switching of a current user to another frequency band.

(4) In the case of an exceeding of the deadline under subsection (2) or subsection (3), the Bundesnetzagentur informs the other Member States and the Commission in good time; it must cite the reasons for the exceeding of the deadline.

Section 95

Orbit positions and spectrum usages by satellites

(1) Natural or legal persons resident or based in the Federal Republic of Germany using orbit positions and spectrum by satellites are subject to the obligations deriving from the Constitution and Convention of the International Telecommunication Union.

(2) Every exercise of German orbital and spectrum usage rights is subject in addition to the spectrum assignment under section 91 (1) to transfer by the Bundesnetzagentur. On application the Bundesnetzagentur undertakes registration, coordination and notification of satellite systems at the International Telecommunication Union and transfers the orbital and spectrum usage rights deriving from this to the applicant. A precondition for the transfer of orbital and spectrum usage rights is that

1. spectrum and orbital positions are available,
2. compatibility with other spectrum usages and other registrations of satellite systems exists and
3. public interests are not negatively affected.

(3) For existing German entries in the plan and other unused orbital and spectrum usage rights at the International Telecommunication Union, an assignment award procedure can be held on the basis of the conditions to be stipulated by the Bundesnetzagentur.

(4) The transfer can be revoked if

1. the orbital and spectrum usage rights are not exercised for more than a year or
2. the preconditions of subsection (2) sentence 3 are no longer met.

Section 96

Spectrum assignment for broadcasting, aviation, maritime shipping, inland shipping and security-related radio applications

(1) For the assignment of spectrum for the transmission of broadcasting in the field of competence of the Länder, in addition to the preconditions of section 91 consultations must be held with the competent Land authority on the basis of the stipulations of broadcasting legislation. The respective Land authority informs the Bundesnetzagentur of the supply needs for broadcasting in the field of competence of the Länder. The Bundesnetzagentur implements these reports of needs in the spectrum assignment under section 91. The Bundesnetzagentur stipulates further details of the procedure on the basis of stipulations of the competent Land authorities under broadcasting legislation. The spectrum assigned to the broadcasting service in the spectrum plan can be used for other purposes than the transmission of broadcasting in the field of competence of the Länder if the capacity is available to which broadcasting is entitled on the basis of the stipulations under broadcasting legislation. The Bundesnetzagentur holds consultations on this with the competent Land authorities. If the competent Land authority has allocated the substantive occupancy of an analogue or digital spectrum usage to transmit broadcasting in the field of competence of the Länder to a right holder for sole use, the holder can conclude a contract with a transmitter network operator of its choice as long as it is ensured that this is in line with the stipulations under broadcasting legislation. To the extent that the transmitter network operator fulfils the preconditions for assignment, the Bundesnetzagentur will assign it with the spectrum on application. The spectrum assignment is to be limited in time to the duration of the allocation by the competent Land authority under broadcasting legislation and can be extended if this allocation continues. In the case of multiplexes occupied by several content providers, the selection of the transmitter network operator will only be conducted by the Bundesnetzagentur if the content providers stipulated under Land law cannot agree on a transmitter network operator before the launch of the multiplex. The competent Land authority informs the Bundesnetzagentur of the outcome of the procedure to reach an agreement. If the right holders stipulated under Land law were unable to agree on a transmitter network operator, the body which is competent under Land law requests the launching of a procedure for the

selection of the transmitter network operator by the Bundesnetzagentur.

(2) Spectrum usages of the Federal Ministry of Defence do not require any spectrum assignment in the frequency bands exclusively allocated to military uses in the spectrum plan.

(3) Spectrum which is allocated for maritime and inland shipping and aviation and which is used for the corresponding purposes on foreign waterborne or aerial vehicles spending time in the area of validity of this law is deemed to have been assigned. This only applies to spectrum which is used on the basis of a valid national permit from the country in which the vehicle is registered.

(4) For spectrum which is allocated for radiocommunication for public protection and disaster relief, the Federal Ministry of the Interior, Building and Community stipulates in consultation with the competent supreme Land authorities in a guideline:

1. the responsibilities of the competent authorities,
2. the procedure for recognition as a party entitled to participate in radiocommunication for public protection and disaster relief,
3. the procedure and the responsibilities for the processing of applications for spectrum allocation within the authorities and organisations with security tasks,
4. the principles of spectrum planning and the procedures for spectrum coordination within the authorities and organisations with security tasks and
5. the rules for the operation of the radiocommunications and for cooperation with the spectrum users of radiocommunication for public protection and disaster relief.

The guideline is, particularly with regard to sentence 1 no. 4 and 5, to be coordinated with the Bundesnetzagentur. The Federal Ministry of the Interior, Building and Community confirms in individual cases, following a hearing of the supreme federal or Land authorities which are responsible for the subject matter, the fact that an applicant belongs to the group of the entitled parties recognised under sentence 1.

(5) The Bundesnetzagentur assigns spectrum for the usage of the aeronautical service if the necessary decisions of the Federal Supervisory Authority for Air Navigation Services under aviation law have been taken. This is without prejudice to the competence of the Bundesnetzagentur and its possibilities to intervene stipulated under section 91.

(6) Spectrum for usage by coast stations of the port operations service is only assigned if the waterways and shipping administration has given its approval.

Section 97

Assignment of spectrum sharing, trialling of innovative technologies, spectrum needs arising in the short term

(1) Spectrum in which efficient usage is not to be expected from one individual alone can be assigned to several parties for shared use. The holders of these spectrum usage rights have to accept negative effects deriving from spectrum sharing in line with the stipulations.

(2) In substantiated individual cases, particularly to test innovative technologies in telecommunications or in the case of spectrum needs arising at short notice, it is possible to depart for a limited period from the stipulations governing the assignment of spectrum contained in the spectrum plan. The precondition for this is that no spectrum usage is negatively affected. If interests of the Länder are affected in the case of the transmission of broadcasting in the field of competence of the Länder, consultations must be held with the competent Land authority on the basis of the stipulations of broadcasting legislation.

Section 98

Assignment of alternative spectrum use

(1) If there is no sufficient demand at national or regional level for the usage of a frequency band of the harmonised

spectrum, the Bundesnetzagentur can in line with Article 45 (4) and (5) of Directive (EU) 2018/1972 assign such a frequency band wholly or partly for alternative usage to the extent that

1. the lack of demand for the usage of such a frequency band has been established following hearing of the affected groups, including a forward-looking assessment of demand on the market, and
2. the alternative usage does not prevent or impair the availability or the use of such a frequency band in other Member States of the European Union.

(2) The Bundesnetzagentur reviews the existence of the preconditions at regular intervals ex officio or on application from a party interested in the harmonised use. The Bundesnetzagentur informs the Federal Ministry of Transport and Digital Infrastructure, the Commission and the other Member States of the European Union about the decision taken including the reasons and about the outcome of the review of the decision.

Section 99

Elements of the spectrum assignment

(1) In the context of the spectrum assignment, it is necessary to stipulate in particular:

1. the type and scope of the spectrum usage to the extent that this is necessary to ensure efficient and undisrupted usage of the spectrum and
2. the general criteria for the extension of the spectrum assignment in accordance with section 92 (3) sentence 6.

International agreements on spectrum coordination must be observed when the type and scope of the spectrum usage are stipulated.

(2) If the Bundesnetzagentur attaches side conditions to spectrum assignments in accordance with subsection (3) sentence 1 no. 1, it can, in particular in order to ensure effective and efficient spectrum usage or to improve the supply, provide inter alia for the following possibilities:

1. for the shared usage of passive or active infrastructure for radio spectrum usage or of radio spectrum,
2. for commercial roaming access agreements and
3. for the joint expansion of infrastructure for the provision of telecommunications networks or services based on radio frequencies.

The Bundesnetzagentur ensures that the conditions attached to spectrum usage rights do not impede the spectrum sharing. The implementation by the undertakings of the conditions imposed by this subsection remains subject to the Act against Restraints of Competition.

(3) In order to ensure efficient and undisrupted usage of the spectrum, the other regulatory aims cited in section 2 and the aims of spectrum regulation cited in section 87,

1. side conditions can be attached to the spectrum assignment and
2. the spectrum, side conditions for spectrum assignment and the type and scope of the spectrum usage can be subsequently altered; here, the proportionality principle must be upheld.

The interested groups, including users and consumers, are given an adequate period to present their views on the planned alterations under sentence 1 no. 2. The period under sentence 2 amounts in principle to at least four weeks unless the planned alterations are marginal. Alterations are published, with the reasons being cited. If the changes affect interests of the Länder in the case of the transmission of broadcasting in the field of competence of the Länder, consultations must be held with the competent Land authority on the basis of the stipulations of broadcasting legislation.

(4) The spectrum assignment can contain indications of the parameters on which the Bundesnetzagentur has based the stipulations on the type and scope of spectrum usage with regard to the receiving installations. If the communicated parameters are not complied with, the Bundesnetzagentur will not take any measures to counter disadvantages.

(5) Spectrum which serves the transmission of broadcasting in the field of competence of the Länder is assigned in

consultation with the competent Land authority at conditions which ensure that the interests of the Länder under broadcasting legislation are taken into account.

(6) Assigned spectrum may only be used with radio equipment which corresponds to the Radio Equipment Act.

Section 100

Assignment award procedure

(1) If the Bundesnetzagentur has ordered under section 91 (9) that the assignment of spectrum must be preceded by an assignment award procedure, it can after hearing the affected groups carry out the auction procedure under subsection (5) or the bidding procedure under subsection (6). When deciding on the choice of the assignment award procedure in accordance with sentence 1, the Bundesnetzagentur stipulates the general aims of the procedure. The aims are, in addition to the promotion of competition and the improvement of the supply, particularly in rural areas, restricted to one or several of the following aspects:

1. ensuring the necessary service quality,
2. promotion of the efficient usage of spectrum, not least giving consideration to the conditions applying to the usage rights and the level of the charges, or
3. promotion of innovation and business development.

(2) The assignment award procedure to be implemented is the one most suited to attaining the regulatory aims under sections 2 and 87. The auction procedure under subsection (5) is not to be implemented for spectrum which is envisaged for the transmission of broadcasting in the field of competence of the Länder.

(3) The Bundesnetzagentur publishes the decision on the selection of the assignment award procedure and the stipulation and rules for the implementation of the procedures, citing the reasons. Also, it publishes the related spectrum usage provisions. It presents the results of an evaluation of the competition situation and the technical and economic circumstances of the market relating to the decision.

(4) Prior to the implementation of an assignment award procedure, the Bundesnetzagentur determines

1. the subjective, substantive and objective minimum requirements to be met by an applicant for admission to the assignment award procedure,
2. the spectrum usage for which the spectrum to be awarded may be used, observing the spectrum plan,
3. the necessary basic provision of spectrum needed for the assumption of a telecommunications service to the extent that this is needed, and
4. the spectrum usage provisions including the level of coverage in the spectrum usage and its implementation in terms of time; when stipulating the level of coverage and its implementation in terms of time, the Bundesnetzagentur takes account of possibilities for holders of spectrum usage rights to make shared usage of or to build up publicly funded infrastructure, in addition to the regulatory aims under sections 2 and 87.

(5) In the case of an auction, the Bundesnetzagentur stipulates the detailed rules for the implementation of the assignment award procedure prior to the implementation of the auction procedure. The rules must be objective, understandable and non-discriminatory and give consideration to the interests of small and medium-sized enterprises. The Bundesnetzagentur stipulates a minimum bid for the right to use the spectrum to be auctioned, as well as payment rules. The auction is preceded by a procedure in which admission to bid in the auction applied for in writing or electronically. The Bundesnetzagentur decides on admission by means of a decision in writing or electronically. The application for admission must be rejected if the applicant does not explain and prove that it fulfils the preconditions stipulated under subsection (4) and the preconditions existing under section 91 (5).

(6) In the case of a bidding procedure, the Bundesnetzagentur stipulates the criteria for the assessment of the suitability of applicants prior to the implementation of the assignment award procedure. The criteria are

1. the reliability, expertise and capabilities of the applicant,

2. the suitability of planning to be presented for the usage of the spectrum up for auction,
3. the promotion of a sustainably competitive market and
4. the level of spatial coverage.

If applicants are otherwise equally suitable, the applicant to be selected is the one ensuring a higher level of spatial coverage with the relevant telecommunications services. The Bundesnetzagentur stipulates the award price to be paid for the spectrum usage right and rules for the payment to be made in the case of an award.

(7) The assignment of the spectrum takes place under section 91 once the assignment award procedure under subsection (3) sentence 1 has been carried out. Obligations taken on by applicants in the course of an auction or bidding procedure become elements of the spectrum assignment.

(8) In the case of an auction procedure under subsection (5) or a bidding procedure under subsection (6), the maximum period of six weeks cited in section 91 (4) can be extended for as long as necessary, but by a maximum of eight months, in order to ensure a procedure which offers equal opportunities and is appropriate, open and transparent for all participants. These deadlines are without prejudice to international agreements in force about the usage of spectrum and satellite coordination.

Section 101 **Making spectrum usage more flexible**

(1) The Bundesnetzagentur can determine frequency bands in which it releases spectrum usage rights for trading, renting or cooperative, shared usage (spectrum pooling), in order to permit flexible spectrum usage. The relevant groups must be heard before the decision to release the frequency band.

(2) To the extent that the Bundesnetzagentur takes a decision to release a frequency band under subsection (1) sentence 1, it stipulates at the same time the general conditions and the procedure for trading, rental and spectrum pooling. The general conditions and the procedure must ensure in particular that

1. the efficiency of the spectrum usage is enhanced or maintained,
2. the original assignment award procedure does not counteract a spectrum assignment,
3. there are no concerns that competition will be distorted,
4. the other general statutory conditions, and particularly the conditions of usage and international agreements on spectrum usage, are complied with, and
5. the fulfilment of the regulatory aims under sections 2 and 87 is ensured.

The Bundesnetzagentur publishes the decision on the general conditions and the procedure. The decision is taken in consensus with the body responsible under Land law to the extent that spectrum which is envisaged for broadcasting services is affected.

(3) Revenues obtained from measures under subsection (1) are due, minus administrative costs, to the party which transfers its spectrum usage rights to third parties or for usage or shared usage.

(4) Holders of spectrum usage rights inform the Bundesnetzagentur about their intention to transfer or rent out spectrum usage rights, and also about the transfer or renting out of spectrum usage rights. The Bundesnetzagentur publishes this information.

Section 102 **Revocation of the spectrum assignment, renunciation**

(1) A spectrum assignment can, in addition to the cases of section 49 (2) of the Administrative Procedure Act, be fully or partially revoked if

1. the usage of the spectrum in accordance with the purpose pursued by the assignment has not begun within a year after the assignment,
2. the spectrum has been used for more than a year in a manner that is not in accordance with the purpose pursued by the assignment,
3. one of the preconditions under section 91 (5) or section 96 (4) to (6) no longer exists,
4. an obligation which derives from the spectrum assignment is seriously or repeatedly violated or not complied with despite a demand to do so,
5. distortions of competition are likely following the spectrum assignment or
6. there are fears of a distortion of competition due to a change in the ownership structure of the holder of the spectrum usage right.

(2) The time limit until the revocation takes effect must be appropriate.

(3) To the extent that spectrum for the transmission of broadcasting in the field of competence of the Länder is affected, the Bundesnetzagentur holds consultations with the competent Land authority on the basis of the stipulations of broadcasting legislation.

(4) The spectrum assignment is to be revoked if, in the case of spectrum which is assigned to the transmission of broadcasting in the field of responsibility of the Länder, all stipulations under broadcasting legislation by the competent Land authority for broadcasting transmitted on this frequency have ceased to apply. If in the case of spectrum under sentence 1 one or all the stipulations of broadcasting legislation under sentence 1 have ceased to apply and no new stipulation under broadcasting legislation is made within six months, the Bundesnetzagentur can assign this spectrum to the previous holder in consultation with the competent Land authority. The assignment under sentence 2 takes place with a restricted obligation or without an obligation to transmit broadcasting in the field of competence of the Länder in line with the spectrum plan, even if this does not correspond to the previous assignment award procedure.

(5) Mere changes to the spectrum usage as a consequence of the application of the provisions cited in section 89 (2) sentence 2 do not on their own justify the revocation of a spectrum assignment.

(6) Section 49 (6) of the Administrative Procedure Act is not to be applied to the revocation under subsections (1) and (4).

(7) Spectrum assignments for the transmission of broadcasting are to be revoked if a transmitter network operator selected by the content provider under section 96 (1) sentence 7 can demand the assignment to it on application. Subsection (3) applies accordingly to the revocation decision. For the revocation to become effective, an appropriate period of at least three months must be provided.

(8) The spectrum assignment expires if it is renounced. The holder of the spectrum assignment must state the renunciation to the Bundesnetzagentur in writing or electronically, giving a precise designation of the spectrum assignment.

Section 103

Monitoring, order to decommission, monitoring of mobile communications coverage

(1) The Bundesnetzagentur monitors spectrum usage in order to ensure that spectrum is properly managed. To the extent necessary and appropriate for the monitoring, and particularly for the identification of a spectrum user, the staff of the Bundesnetzagentur are authorised to obtain knowledge of the details of a telecommunications process and in particular cases to listen in to transmissions. The information obtained under sentence 2 may only be used to ensure that spectrum is properly managed. In derogation of this, information may be transmitted to the competent authorities to the extent that this is required for the prosecution of a criminal offence cited in section 100a of the Code of Criminal Procedure. The fundamental right of the secrecy of telecommunications under Article 10 of the Basic Law is restricted in line with sentences 2 to 4.

(2) In order to ensure that spectrum is properly managed, the Bundesnetzagentur can order a restriction of the operation or the decommissioning of equipment. In order to enforce these orders, a coercive fine of up to 500,000 euros can be stipulated in line with the Administrative Enforcement Act.

(3) The Bundesnetzagentur publishes on its website the information transmitted by the mobile communications operators on

the actual, site-related mobile communications coverage.

(4) The publication under subsection (3) particularly includes, on a provider-related basis:

1. the main local areas of disconnections in voice telephony and
2. the level of coverage

along federal trunk roads, the secondary road network and the railways and waterways in order to ensure the attainment of the aim of spectrum regulation under section 87 (2) no. 1.

(5) The Bundesnetzagentur reports for the first time six months after entry into force of subsections (3) and (4) and subsequently annually to the Committee on Transport and Digital Infrastructure of the German Bundestag on the state of mobile communications coverage particularly with regard to the development of the aspects cited in subsection (4). The subject of the report should also be the provider-related state of the fulfilment of side conditions within the meaning of section 99 (3) which are attached to the assignment of spectrum for mobile communications and have not already been fully met at the time of the reporting.

Section 104

Restriction of the spectrum assignment

The usage of the assigned spectrum can temporarily be restricted if this spectrum is needed by the competent authorities to cope with their tasks in the case of tension and of defence, in the context of alliance obligations, in the context of cooperation with the United Nations, in the context of international agreements on emergency management or in the event of natural disasters, terrorist attacks or other comparable events and particularly serious accidents.

Section 105

Promotion of competition

(1) When spectrum is assigned for telecommunications networks and services in accordance with this Act and when assignments of such spectrum are altered or extended, the Bundesnetzagentur promotes effective competition and avoids distortions of competition in the internal market.

(2) The Bundesnetzagentur can take appropriate measures to achieve the aims cited in subsection (1). These include inter alia

1. the limitation of the quantity of spectrum assigned to an undertaking or, if circumstances justify this, the linking of spectrum usage rights to conditions, for example the granting of wholesale access or national or regional roaming in certain frequency bands or in groups of frequency bands with similar characteristics,
2. the reservation of a certain section of a frequency band or a group of frequency bands for new market participants, if this is appropriate and justified in view of the situation on the national market,
3. the refusal of new assignments or the authorisation of new types of spectrum usage in certain fields or the linking of new usage rights or new types of spectrum usage to certain conditions in order to prevent distortions of competition via the assignment, transfer or accumulation of usage rights,
4. the inclusion of conditions for a prohibition of the transfer of assignments or the imposition of conditions for the transfer of assignments which are not subject to merger control on an EU-wide or nation-wide basis if it is likely that competition would be considerably impaired by the transfer, or
5. the alteration of existing rights in compliance with this Act if this is necessary subsequently to remove distortions of competition as a result of the transfer or accumulation of assignments.

Taking account of the market conditions and available comparative variables, the Bundesnetzagentur bases its decisions on an objective, forward-looking evaluation of the competition situation, of the question as to whether such measures are necessary to maintain or achieve effective competition, and the likely effects of such measures on existing or future investments by the market participants, particularly in network expansion. In the evaluation, the Bundesnetzagentur gives

consideration to the approach described in section 11 (3) on the carrying out of market analyses. It can issue general administrative provisions on this.

(3) Before the Bundesnetzagentur takes measures under subsection (2), it gives interested groups an opportunity to make comments on the draft of the measures within an appropriate period. The length of the period must correspond to the complexity of the matter and amount to at least one month. In extraordinary circumstances, a shorter deadline can be set. This is without prejudice to section 99 (3). The results of the hearing and the measures must be published. When applying subsection (2), the Bundesnetzagentur also acts in line with the procedure cited in section 107.

Section 106

Local roaming, access to active and passive network infrastructures

(1) The Bundesnetzagentur can oblige the operator of a public mobile communications network to make possible in a spatially defined area the shared use of passive infrastructure or, to the extent that this is insufficient, roaming (local roaming) if

1. there are insurmountable economic or physical barriers to the market-driven network expansion in this area, due to which end-users only have extremely patchy access to public mobile communications networks and services,
2. the local roaming is directly necessary for the offering of publicly available telecommunications services at local level via mobile communications networks,
3. no other mobile communications network operator is provided with viable and comparable alternative access paths to the end-users at fair and appropriate conditions in this area,
4. the possibility for such an obligation was explicitly envisaged
 - a) in the case of an assignment award procedure in the conditions governing the award of spectrum assignments,
 - b) apart from this in good time before the spectrum assignment,
5. undertakings benefiting from the obligation make an appropriate contribution to the supply of previously undersupplied areas and
6. no agreement on local roaming or the shared use of passive infrastructure is reached amongst the parties within three months; the period for negotiations between the parties can be extended by a further month to the extent that all the parties unanimously apply for this to the Bundesnetzagentur.

(2) When deciding on an obligation under subsection (1), the Bundesnetzagentur particularly gives consideration to

1. the ensuring of end-to-end, uninterrupted access for all end-users to voice and broadband data services of public mobile communications at least along federal trunk roads and also in the secondary road network and on all railways and waterways if possible by 2026 and in further areas with extremely patchy access for end-users,
2. the efficient usage of spectrum,
3. the making possible of a significantly larger selection and a higher service quality for the end-users,
4. the technical feasibility and the related conditions,
5. the state of competition on infrastructure and services,
6. technical innovations and
7. the priority need first to create incentives for the undertaking obligated under subsection (1) with regard to the expansion of the infrastructure.

(3) Section 12 applies accordingly.

(4) Irrespective of the obligation under subsection (1), the Bundesnetzagentur can oblige undertakings which provide public mobile communications networks in a spatially defined area to grant access to active network infrastructure in this area.

Subsections (1) to (3) apply accordingly.

(5) The Bundesnetzagentur decides on the conditions at which an undertaking obligated under subsection (1) or (4) must grant local roaming or the access to active or passive infrastructure within two months of the decision under subsection (1) or (4), to the extent that the parties have not achieved agreement on this in this period. The period can be extended by a further month. The conditions must be objective, transparent, proportionate and non-discriminatory.

(6) The Bundesnetzagentur can oblige the beneficiaries of the order under subsection (1) or (4) to make shared usage of spectrum with the party obligated by the order under subsection (1) in the respective area.

(7) The Bundesnetzagentur reviews obligations and conditions under subsections (1) to (6) within five years of their being issued. In so doing, it particularly examines whether their alteration or revocation would be appropriate in view of the changing circumstances.

Section 107

Participation in the Radio Spectrum Policy Group

(1) To the extent that the Bundesnetzagentur intends to carry out an assignment award procedure under section 91 (9) in conjunction with section 100 with regard to harmonised spectrum for wireless broadband networks and services or measures under section 105 (2), it informs the Radio Spectrum Policy Group about corresponding drafts of decisions or measures at the same time as they are published in the hearing procedure.

(2) The Bundesnetzagentur states in the information provided under subsection (1) whether and, if appropriate, when it calls on the Radio Spectrum Policy Group to convene a Peer Review Forum under Article 35 of Directive (EU) 2018/1972.

(3) To the extent that the Radio Spectrum Policy Group convenes a Peer Review Forum under Article 35 (2) of Directive (EU) 2018/1972, the Bundesnetzagentur explains the draft measure under Article 35 (4) of Directive (EU) 2018/1972.

Part 7

Numbering

Section 108

Numbering

(1) The Bundesnetzagentur assumes the task of numbering. In particular, it is responsible for the structuring and design of the numbering space with a view to satisfying the requirements of end-users, operators of telecommunications networks and providers of telecommunications services. The Bundesnetzagentur also assigns numbers to the operators of telecommunications networks, providers of telecommunications services and end-users. The administration of domain names at the top and subordinate levels is exempted from this. The Bundesnetzagentur publishes the assignment decisions under sentence 3 whilst upholding the protection of personal data.

(2) In the context of its work under subsection (1), the Bundesnetzagentur makes available a range of non-geographic numbers which can be used to provide telecommunications services other than interpersonal telecommunications services also abroad.

(3) In order to implement international obligations or recommendations and to ensure the sufficient availability of numbers, the Bundesnetzagentur can undertake alterations in the structure and design of the numbering space and the national numbering plan. Here, appropriate consideration must be given to the interests of the affected parties, particularly the costs of conversion arising for the operators of telecommunications networks, the providers of telecommunications services and the users. Intended alterations must be announced in good time before they take effect. The operators of telecommunications

networks and the providers of telecommunications services affected by these changes are obliged to take the measures necessary for implementation.

(4) The Bundesnetzagentur can issue orders in order to implement the obligations under subsection (3). In order to enforce the orders, coercive fines of up to 500,000 euros can be stipulated in line with the Administrative Enforcement Act.

(5) The Bundesnetzagentur takes the necessary measures, to the extent that the end-user receiving the call has not restricted calls from certain geographical areas for economic reasons, to ensure that

1. the end-users are in a position to reach and use services using non-geographic numbers in the European Union and
2. the end-users are in a position, irrespective of the technology used by the operator and the equipment used by it, to reach all the telephone numbers existing in the European Union, including the numbers in the national numbering plans of the Member States of the European Union and universal international free-of-charge telephone numbers.

(6) The Federal Government is authorised to stipulate yardsticks and guidelines by means of ordinances for

1. the structuring, design and administration of the numbering spaces and
2. the acquisition, extent and loss of rights to use numbers.

This also includes the implementation of related international recommendations and obligations in national law and the stipulation of rules to use numbers in accordance with subsection (2). Here, consideration must be given in particular to:

1. efficient use of numbers,
2. the interests of the market participants including certainty for planning,
3. the economic effects on the market participants,
4. the requirements for the use of numbers and the long-term coverage of demand and
5. the interests of the end-users.

The ordinance must stipulate in detail the powers of the Bundesnetzagentur and the rights and obligations of the market participants and the end-users. Subsection (1) sentence 4 applies accordingly.

(7) If in the award procedure for generic top-level domains a declaration of agreement or certificate of non-objection from a German governmental or administrative body is required for the assignment or use of a geographical designation which is identical with the name of a territorial authority, the decision on the issuing of the agreement or certificate of non-objection is taken by the body responsible under the respective Land law. If several territorial authorities have identical names, the decision-making power rests with the territorial authority which is generally accepted to be of the greatest significance.

Section 109 **Price indication**

(1) Anyone offering end-users

1. premium rate services,
2. directory enquiry services,
3. mass calling services,
4. medium rate services,
5. short code dialling services or
6. services via national subscriber numbers

or advertising these must cite the maximum price under section 112 (1) to (5) or (6) sentence 4 metered per minute, or if not metered, per usage including value-added tax and other price components for the use of the service. In the case of prices stipulated under section 123 (7) sentence 1, this price must be cited. If all providers offer a lower price than the maximum

price uniformly across all networks, this may also be cited.

(2) The price must be cited in a way that is easy to read, clearly visible and in the direct context of the telephone number. The price indication must if possible be made in an accessible way. If the telephone number is shown, the price indication may not be displayed for a shorter time than the telephone number. It is necessary to draw attention to the conclusion of a contract for the performance of a continuing obligation.

(3) In the case of facsimile services, the number of the pages to be transmitted must also be cited.

Section 110

Price announcement

(1) Anyone who stipulates the price to be paid by the end-user for the use of

1. speech-based premium rate services,
2. short code dialling speech services,
3. speech-based directory enquiry services and
4. speech-based carrier selection

must, prior to the commencement of the obligation to pay a fee announce to the end-user the price to be paid for the use of this service metered per minute or, if unmetered, per volume of data or other usage including the value-added tax and other price components. For speech-based carrier selection, the price must be permanently announced in euros or in cents; a switch between the price announcement in euros and in cents is not permissible.

(2) The price announcement under subsection (1) must concluded at the latest three seconds before the commencement of the obligation to pay a fee, making reference to the time of the commencement of that obligation. If this price changes during the use of the service, the price to be paid after the change must be announced in accordance with subsection (1) and sentence 1 before the beginning of the new tariff section with the proviso that the announcement can also be made during the use of the service. When call queues are used under section 115 (1) no. 5, neither the beginning nor the end of the call queue represents a change in the price within the meaning of sentence 2 if the price to be paid by the end-user within the meaning of subsection (1) sentence 1 for the tariff section after the call queue is unchanged from the price for the tariff section before the call queue.

(3) In the case of the use of speech-based mass calling services, the service provider must announce to the end-user the price to be paid for the use of the service in line with subsections (1) and (2). In derogation of sentence 1 the price announcement can take place directly following the use of the service if the price does not exceed 1 euro per minute or use.

(4) In the case of onward connection by a speech-based directory enquiry service, the obligation to announce the price under subsection (1) also applies to the call to be connected onward by the directory enquiry service provider. The announcement can be made during the use of the speech-based directory enquiry service but must be undertaken before the onward connection; subsection (2) sentence 2 and 3 apply accordingly. Reference must be made to the obligation to pay a fee for any call queueing resulting from the onward connection and the irrelevance of other price announcements in the context of the call queue. When the onward connection is to free-of-charge telephone services, reference must be made to the irrelevance of any references to their being free of charge.

Section 111

Price display

(1) In the case of short code data services, the party which stipulates the price to be paid by the end-user for the use of this service must

1. prior to the commencement of the obligation to pay a fee display clearly visibly and legibly the price to be paid for the use of this service including the value-added tax and other price components from a price of 1 euro per use,

2. have the receipt of the information confirmed by the end-user.

(2) It is possible to deviate from the obligations under subsection (1) if

1. the service is provided in the public interest or
2. the end-user uses a suitable procedure to identify him or herself to the obligated party under subsection (1) prior to the use of the service.

The details are regulated and published by the Bundesnetzagentur.

Section 112

Maximum price limits

(1) Prices for metered connections and services billed via telephone numbers for premium rate services, short code services and directory enquiry services may only be charged if they amount to a total of at most 3 euros per minute, to the extent that no different prices may be charged under subsection (6). This also applies in the case of onward connection by a directory enquiry service. The billing may be undertaken at most in 60 second intervals. Sentence 3 applies accordingly to the carrier selection.

(2) Prices for unmetered connections and services billed via telephone numbers for premium rate services, short code services and directory enquiry services may only be charged if they amount to at most 30 euros per connection, to the extent that no different prices may be charged under subsection (6).

(3) If the price of premium rate services, short code services and directory enquiry services billed via telephone numbers is formed from metered and unmetered shares of services, these price shares must either be listed separately in the itemised bill, to the extent that this is issued, or procedures under subsection (6) sentence 3 must be applied. The price under sentence 1 may amount to a maximum of 30 euros per call to the extent that no different prices may be charged under subsection (6).

(4) Prices for calls to medium rate services may only be charged if they amount to a maximum of 0.14 euros per minute or 0.20 euros per call, to the extent that no different prices may be charged under subsection (6). The billing may be undertaken at most in 60 second intervals.

(5) Prices for calls to national subscriber numbers and personal numbers may only be charged if they amount to a maximum of 0.09 euros per minute, to the extent that no different prices may be charged under subsection (6). The billing may be undertaken at most in 60 second intervals.

(6) Prices extending beyond the price limits of subsections (1) to (5) may only be charged if the customer uses a suitable procedure to identify him or herself to the provider before the service is used. The Bundesnetzagentur regulates the details. It can stipulate by general administrative act details on admissible procedures regarding charging under subsections (1) to (5). Further to this, the Bundesnetzagentur can stipulate different maximum price limits than those in subsections (1) to (5) in line with the procedure under section 123 (7) if the general development of the prices or the market makes this necessary.

Section 113

Disconnection

(1) The provider of publicly available telecommunications services in which the telephone number for premium rate services, short code voice services or directory enquiry services is set up must disconnect every metered connection to this telephone number after 60 minutes. This is also the case if there has been an onward connection to a telephone number for premium rate services or for short code voice services.

(2) It is possible to depart from the obligation under subsection (1) if the end-user uses a suitable procedure to identify him or herself to the provider prior to the use of the service. The Bundesnetzagentur regulates the details. It can stipulate the details of the admissible disconnection procedures in a general administrative order.

Section 114

Diallers

(1) Diallers which establish connections to a number in which content is billed alongside the telecommunications service are inadmissible.

(2) The Bundesnetzagentur stipulates procedures and maximum limits to protect the called party against unreasonable harassment from attempted calls in the case of the use of diallers which the caller uses to establish connections to a number in which no content is billed in addition to the telecommunications service (telephony diallers). The stipulation takes place via a general administrative order. Prior to the stipulation, the affected undertakings, expert groups and consumer associations must be heard.

(3) The procedures and maximum limits stipulated under subsection (2) must be complied with at the latest one year after they enter into force to the extent that no different implementation deadline is determined in the stipulation. From this time, telephony diallers may only be used if the procedures and maximum limits stipulated by the Bundesnetzagentur are complied with. The Bundesnetzagentur reviews the stipulated procedure and maximum values in terms of their effectiveness at regular intervals.

Section 115

Call queueing

(1) Call queueing may only be used if one of the following preconditions is fulfilled:

1. the call is made to a free telephone number,
2. the call is made to a locality-based telephone number or a telephone number which the Bundesnetzagentur has made equivalent to the locality-based telephone numbers under subsection (3),
3. the call is made to a telephone number for mobile services (015, 016 or 017),
4. there is a fixed price per connection for the call, or
5. the call is free of charge for the duration of the call queueing for the caller, unless the costs are related to the setting up of the connection abroad in the case of calls from abroad.

(2) When, in the case of a call not covered by subsection (1) no. 1 to 3, a call queue is first used during the call, the called party must ensure that the caller is informed about the likely duration of the call queue as soon as he or she is placed in the queue, and, without prejudice to sections 109 to 111, is informed whether a fixed price applies to the call or the call is free of charge for the caller for the duration of the period in the queue in accordance with subsection (1) no. 5. The announcement can be terminated prematurely when the processing begins.

(3) On application from the assignment holder, the Bundesnetzagentur establishes equivalence of telephone numbers with the locality-based telephone numbers under subsection (1) no. 2 with regard to the use of call queues if

1. the called party does not directly or indirectly receive from the caller a fee for the call to this number via the provider of telecommunications services and calls to this number are generally covered by the flat-rate tariffs available on the market and
2. the charging arrangements for this telephone number do not in any other way justify different treatment than that accorded to locality-based telephone numbers.

Section 116

Elimination of the entitlement to a fee

The end-user is not be obliged to pay a fee if and insofar as

1. no information was provided about the charged price contrary to section 110 (1), (2) and (3) sentence 1 prior to the commencement of the use, contrary to section 110 (3) sentence 2 directly following the use or contrary to section 110 (4) during the use of the service,
2. contrary to section 111 no information was provided before the use about the price charged and there was no confirmation from the end-user,
3. contrary to section 112 the maximum price limits were not complied with,
4. contrary to section 113 the maximum time limit was not complied with,
5. diallers were used contrary to section 114 (1),
6. contrary to section 115 (1), one or several call queues were used by the called party or the information under section 115 (2) was not provided or was not provided fully or in time,
7. contrary to section 119 (1) sentence 2 reverse charge call services are offered with payments to the caller,
8. following entry in the blocking list under section 119 (2) a reverse charge call is made to the blocked connection or
9. the Bundesnetzagentur has issued a ban on billing and collection under section 123 (5) sentence 1.

In these cases, the obligation for the caller to pay for the entire call is revoked.

Section 117 Entitlement to information

(1) Everyone who has a justified interest can demand in writing or electronically information from the Bundesnetzagentur about the name and the address at which documents can be served of the party who has been assigned a number by the Bundesnetzagentur. The information should be provided without delay following the receipt of the enquiry under sentence 1.

(2) Everyone with a justified interest can demand, free of charge, from the party to whom the (0)137 number or telephone numbers for short code services are issued

1. information about the name and the address at which documents can be served of the party offering services via one of these telephone numbers, or
2. the information about the party to which the telephone number has been transferred under section 59.

In the case of short code numbers which are not assigned by the Bundesnetzagentur, the entitlement exists with regard to the party in whose network the short code number is routed. In the case of telephone numbers transferred in accordance with section 59, the entitlement to information under sentence 1 no. 1 exists with regard to the provider to which the telephone number was transferred. The information under sentences 1 to 3 is to be issued within ten working days following receipt of the enquiry made in writing or electronically. The parties obliged to provide information must collect the information from their customers and keep it up to date.

Section 118 Database for (0)900 numbers

(1) All the assigned (0)900 numbers are held in a database at the Bundesnetzagentur. The database is to be published in the internet with the following information:

1. the name and the address at which documents can be served of the service provider,
2. in the case of service providers headquartered abroad, also the address at which documents can be served of a person authorised to take delivery of documents in Germany.

(2) Anyone can obtain information about the data stored in the database in writing or electronically from the

Section 119

Reverse charge calls

- (1) No payments may be made to the caller as a result of calls in which the called party is charged the connection fee (reverse charge calls). The offer of reverse charge call services with a payment to the caller under sentence 1 is inadmissible.
- (2) The Bundesnetzagentur administers a blocking list of telephone numbers which are to be blocked by reverse charge call services for incoming reverse charge calls. End-users can commission their provider of telecommunications services to have their numbers included in the blocking list free of charge. A charge may be imposed for removal from the list. The provider transmits the end-user's wish and any necessary deletions due to the ending of the secondary assignment to the Bundesnetzagentur. The Bundesnetzagentur provides the blocking list for access by providers of reverse charge call services.

Section 120

Telephone number transmission

- (1) Providers of publicly available number-based interpersonal telecommunications services which allow end-users to create outgoing connections must ensure that, when the connection is established, the transmitted caller's telephone number is a complete nationally significant telephone number of the German numbering space and marked as such. The telephone number must be assigned to the end-user for the service in the context of which the connection is established. Telephone numbers for directory enquiry services, mass calling services or premium rate services, numbers for short code services and the emergency numbers 110 and 112 may not be displayed as the caller's telephone number. Other providers involved in the connection may not alter transmitted telephone numbers.
- (2) End-users may only use additional telephone numbers and transmit them to the public telecommunications network if they have a right to use the corresponding telephone number and it is a telephone number of the German numbering space. In derogation of sentence 1, the caller's transmitted and displayed telephone number may be used in the case of a forwarded call as an additional telephone number. Telephone numbers for directory enquiry services, mass calling services or premium rate services, numbers for short code services and the emergency numbers 110 and 112 may not be used by end-users as an additional telephone number and transmitted to the public telecommunications system. Following a hearing of the affected expert groups and consumer associations, the Bundesnetzagentur can stipulate preconditions in which the use of a foreign telephone number is admissible in derogation of sentence 1.
- (3) All of the providers of publicly available telecommunications services involved in the connection must ensure that telephone numbers for directory enquiry services, mass calling services or premium rate services, numbers for short code services and the emergency numbers 110 and 112 are not transmitted and displayed as the caller's telephone number. They must break off connections in which telephone numbers under sentence 1 are transmitted and displayed as the caller's telephone number.
- (4) All of the providers of publicly available telecommunications services involved in the connection must ensure that a nationally significant telephone number of the German numbering space is only displayed as the caller's telephone number if the connection is passed on from the public German telephone network. If a connection in which a nationally significant telephone number of the German numbering space is displayed is passed on from the foreign telephone network, the providers must ensure that the entry path of the connection into the German network is unambiguously marked within the network; the telephone number display must be suppressed. International mobile roaming is excepted from sentence 1. Called parties must have the possibility to easily refuse calls with a suppressed telephone number display free of charge.
- (5) Subsection (1) applies accordingly to providers of number-based interpersonal telecommunications services in the case of the transmission of text messages via the public telecommunications network. In derogation of sentence 1, numbers for short code services and alphanumeric sender codes are admissible if the sender is clearly identifiable for the recipient via this and no two-sided communication is made possible via this.

Section 121

International free-of-charge telephone service

Calls to (00)800 numbers must be free of charge for the caller. This does not prevent the charging of a fee for the use of terminal equipment.

Section 122

Prohibition of circumvention

Sections 109 to 121 must also be applied when attempts are made to circumvent them via different approaches.

Section 123

Powers of the Bundesnetzagentur

(1) The Bundesnetzagentur can in the context of numbering administration issue orders and take other suitable measures to ensure compliance with statutory rules, obligations imposed on the basis of this Act and the conditions issued by it for the assignment of numbers.

(2) The Bundesnetzagentur can oblige the operators of public telecommunications networks and the providers of publicly available telecommunications services to issue information on personal data such as the name and address at which documents can be served of number holders and number users which is needed for the enforcement of this Act, ordinances issued on the basis of this Act, and the conditions issued, to the extent that the undertakings are aware of the data. In particular, the Bundesnetzagentur can demand information on personal data which is necessary for the case-based review of obligations if

1. a complaint has been made to the Bundesnetzagentur,
2. the Bundesnetzagentur assumes for other reasons that obligations have been violated or
3. the Bundesnetzagentur undertakes investigations on its own account.

The obligation to provide information under sentences 1 and 2 is without prejudice to other rules.

(3) In order to prosecute violations of section 120, the Bundesnetzagentur can demand information from the providers of publicly available telecommunications services about the telephone number from which a call was made and the personal data necessary for the prosecution such as the name and address at which documents can be served of the number holder and the number user. In order to meet this obligation to provide information, providers of publicly available telecommunications services may process traffic data to the extent necessary for this.

(4) In the case of non-fulfilment of statutory obligations or obligations imposed by authorities, the Bundesnetzagentur can withdraw the illegally used number. Further to this, in the case of sure knowledge of the illegal use of a telephone number, it can order the network operator in whose network the number is routed to switch off the telephone number.

(5) If it has sure knowledge of an illegal use of a number, the Bundesnetzagentur can call on the party producing the invoice not to undertake invoicing and collecting. In this connection, it can

1. prohibit the disbursement and clearance of fees already collected and
2. order the refunding of fees already collected.

(6) If the Bundesnetzagentur assigns numbers under section 108 (2), it attaches the rights to use the numbers to certain conditions in order, in the case of services provided from abroad, to ensure compliance with the relevant foreign consumer protection rules and the foreign legislation. If the competent authority of the state in which the numbers are used proves that there has been a violation of its relevant consumer protection rules or its national legislation in the context of number use, the Bundesnetzagentur will, on application from this authority, take measures to enforce these conditions.

(7) To the extent that the responsibility for the tariff for premium rate services, directory enquiry services, mass calling services or medium rate services rests with the caller's provider and for this reason different fees would apply to connections, the Bundesnetzagentur will, following a hearing of the affected undertakings, expert groups and consumer associations, stipulate the price across networks for all providers for the purpose of the price indication and price announcement under sections 109 and 110, in each case relating to certain numbering ranges or numbering sub-ranges. To the extent necessary, the Bundesnetzagentur also stipulates the party which must make the price announcement under section 110 (1). This is without prejudice to Part 2 Division 2.

(8) In order to enforce the orders under subsections (1) to (6), a coercive fine of at least 1,000 euros to up to a maximum of 1,000,000 euros can be stipulated in line with the Administrative Enforcement Act.

(9) This is without prejudice to the rights of the Länder and the powers of other authorities.

Section 124

Communication to public prosecutor or administrative authority

The Bundesnetzagentur transmits facts which justify the suspicion of a criminal offence or an administrative offence to the public prosecutor or the administrative authority.

Part 8

Rights of way and shared use

Division 1

Rights of way

Section 125

Entitlement to use public pathways and its transfer

(1) The Federation is authorised to use transport infrastructure for telecommunications lines serving public purposes free of charge as long as this does not permanently restrict the purpose for which the traffic route has been dedicated (right of use). Transport infrastructure is defined as public paths, places, bridges and tunnels, and public bodies of water.

(2) The Federation transfers the right of use under subsection (1) via the Bundesnetzagentur on application to the owner or operator of public telecommunications networks or telecommunications lines serving public purposes. In the application under sentence 1, the area for which the right of use is to be transferred must be designated.

(3) The Bundesnetzagentur transfers the right of use if the applicant is demonstrably expert, reliable and capable of constructing telecommunications lines and the right of use is compatible with the regulatory aims under section 2. The Bundesnetzagentur issues the right of use for the duration of the public activity. It decides on complete applications within six weeks.

(4) The Bundesnetzagentur must be informed without delay of beginning and end of the use and any other termination of the right of use under subsection (2), changes of name and address, and transformations of the undertaking which preserve the identity. The Bundesnetzagentur makes this information available to the authorities responsible for the construction and

maintenance of public ways. The party holding the right of use is liable for damages arising from the failure to communicate alterations in time.

Section 126

Obligations of the owners and operators of public telecommunications networks or telecommunications lines serving public purposes

Telecommunications lines must be constructed and maintained in such a way that they satisfy the requirements of public safety/security and order and recognised good engineering practice.

Section 127

Laying and alteration of telecommunications lines

- (1) The written or electronic consent of the authority responsible for the construction and maintenance of the public ways is required for the laying or the alteration of telecommunications lines.
- (2) If the authority responsible for the construction and maintenance of the public way is itself the operator of a telecommunications line or there is a concentration with an operator within the meaning of section 37 (1) or (2) of the Act against Restraints of Competition, the consent under subsection (1) must be issued by an administrative unit which is independent of the administrative unit responsible for the operation of the telecommunications line or for the assumption of the rights of the company.
- (3) The consent is deemed to have been given following a period three months from receipt of the full application. This consent period does not commence if the application is incomplete and the competent authority responsible for the construction and maintenance of the public way informs the applicant of this in text form within a month of receipt of the application by the authority responsible for the construction and maintenance of the public way. In the case of an addition or alteration to the application, the periods under sentences 1 and 2 commence afresh. The consent period can be extended by one month if this is justified by the difficulty of the matter. The extension of the period must be substantiated and communicated in good time.
- (4) If measure entailing only minor structural changes is fully notified to the competent authority responsible for the construction and maintenance of the public way in accordance with any administrative provisions of that authority, and if the authority does not call on the notifier to submit a corresponding application within one month, the consent under subsection (1) is deemed to have been given. This consent period does not commence if the notification is incomplete and the competent authority responsible for the construction and maintenance of the public way informs the notifier of this in text form within a month of receipt of the notification by the authority responsible for the construction and maintenance of the public way. In the case of an addition or alteration to the notification, the periods under sentences 1 and 2 commence afresh.
- (5) Decisions by authorities in line with nature conservation legislation, water management legislation, conservation of architectural heritage and the Road Traffic Regulations which are necessary in the course of the laying or alteration of telecommunications lines must be issued at the same time as the consent under subsection (1). This does not apply in cases in which the Federation is responsible for issuing the consent. This is without prejudice to other authorisation requirements. The Länder are to determine one or several coordinating bodies and ensure that the decisions by the authorities cited in sentence 1 are issued at the same time.
- (6) In the case of the laying of lines above ground, the interests of the authorities responsible for the construction and maintenance of public ways, of the operators of public telecommunications networks and of urban planning are to be weighed up. In this weighing up, it is particularly necessary to give consideration, in favour of the application to lay lines above ground, to the point that the expansion of very high capacity networks is accelerated or the cost of the laying of the lines is significantly reduced. To the extent that this is applied for, as a rule lines should be laid above ground where isolated buildings or collections of buildings are to be reached. To the extent that the laying of the line can be coordinated as part of an overall construction measure which is carried out close to the time following the application for consent, the laying of the line should generally take place below ground.
- (7) The authority responsible for road construction and maintenance must be informed whether optical fibre cables or empty

conduits serving the hosting of optical fibre cables are being laid at less than the depth for laying envisaged in recognised good engineering practice, for example in the form of microtrenching or minitrenching (shallow laying). Shallow laying may take place if the applicant assumes the costs arising from a potential significant impairment of the level of protection or the possibly higher maintenance costs. Sentences 1 and 2 are not to be applied to the laying of optical fibre cables or empty conduits in federal motorways and federal trunk roads upgraded to a similar level to federal motorways.

(8) Side provisions can be attached to the consent; these must be non-discriminatory; the side provisions may only regulate the type and manner of the construction of the telecommunications line and the good engineering practice to be observed here, the safety and smooth flow of traffic, the usual documentation of the location of the telecommunications line citing geographical coordinates in the area of the respective authority responsible for the construction and maintenance of the public way, and the obligations to safeguard traffic. To the extent that no recognised good engineering practice exists for the shallow laying or construction and connection concepts for small-area wireless access points, and the authority responsible for the construction and maintenance of the public way makes requirements regarding the type and manner of the construction of the shallow laying or the construction and connection of small-area wireless access points which differ from the information provided by the applicant, these requirements must be necessary for reasons of public safety/security and order. The consent can also be made dependent on the payment of an appropriate security.

Section 128

Shared use and right of way

(1) Owners or operators of public supply networks may offer their passive network infrastructure to owners or operators of public telecommunications networks for shared use for the expansion of very high capacity networks. Owners or operators of public telecommunications networks may offer their passive network infrastructure to owners or operators of other public supply networks for shared use for their network expansion.

(2) To the extent that the exercise of the right of use under section 125 is not possible for the laying of further telecommunications lines, or only possible at disproportionately high expense, shared use can be made of other passive network infrastructure of public supply network operators under the preconditions of sections 138, 139 and 141. This applies independently of whether the telecommunications line can be used to build up a very high capacity network.

(3) To the extent that the right of use under section 125 is not applicable to the laying of further telecommunications lines on the railway infrastructure and the railway infrastructure is not a passive network infrastructure, shared use can be made of parts of the railway infrastructure under sections 138, 139 and 141. Sections 79, 82, 136 and 137 apply accordingly.

(4) If the exercise of the right of use under section 125 for the laying of further telecommunications lines impairs interests of environmental protection, public health and security or urban and spatial planning, the Bundesnetzagentur can, after hearing the affected groups, order to this extent the shared use and shared accommodation (co-location) of the relevant facilities and the telecommunications lines as is deemed necessary for the affected interests. The measures taken must be objective, transparent, non-discriminatory and proportionate. The Bundesnetzagentur stipulates rules for the distribution of the costs in the case of shared use of telecommunications lines and associated facilities.

Section 129

Consideration of road maintenance and dedicated purpose

(1) When the transport infrastructure is used, if possible any measures that make its maintenance more difficult and any temporary restriction on its dedicated purpose should be avoided.

(2) If maintenance is made more difficult, the party holding the right of use must reimburse the party obliged to maintain the infrastructure with the costs deriving from the increased difficulty.

(3) Following the end of the work on the telecommunications lines, the holder of the right of use must restore the transport infrastructure without delay to the extent that the party obliged to maintain it has not stated that it will itself undertake the restoration. The holder of the right of use must reimburse the party responsible for the maintenance with the expenses for the restoration undertaken by it and replace the damage caused by the work on the telecommunications lines.

(4) The party responsible for the maintenance can assert the fulfilment of the obligations by the holder of the right of use and its rights via a written administrative decision

Section 130

Necessary alteration

(1) If, following the construction of a telecommunications line, the situation arises that its restriction on the dedicated purpose of transport infrastructure is not just temporary or that it prevents the carrying out of the work necessary for its maintenance or stands in the way of the execution of a change to the transport infrastructure intended by the party responsible for its maintenance, the telecommunications line must, to the extent necessary, be altered or removed.

(2) To the extent that transport infrastructure is withdrawn, the authorisation for the holder of the right to use it expires.

(3) In all of these cases, the holder of the right of use must undertake the necessary work on the telecommunications line at its own expense.

(4) The party responsible for the maintenance can assert the fulfilment of the obligations by the holder of the right of use and its rights via a written administrative decision.

Section 131

Tree preservation

(1) The trees planted on and by the transport infrastructure and agricultural roads within the meaning of section 134 (1) sentence 1 no. 3 must be preserved where possible, with consideration being given to the growth of the trees. Removal of branches can only be demanded to the extent that this is necessary to construct the telecommunications line or prevent disruption to the operation of them; it must be restricted to the absolutely necessary degree.

(2) The holder of the right of use must give the owner of the trees an appropriate deadline within which it can itself remove the branches. If the removal of the branches is not undertaken, or not undertaken sufficiently, the holder of the right of use will effect the removal. It is also authorised to do this if it is a question of the urgent prevention or removal of a disruption.

(3) The holder of the right of use replaces the damage caused to the trees and the costs of the removal of branches undertaken in response to its demand.

Section 132

Special installations

(1) The telecommunications lines must be installed in such a way that they do not disrupt existing special installations (facilities serving road maintenance, sewage pipes, water pipes, gas pipes, railways, electrical installations, etc.). The costs arising from necessary protective measures due to the construction must be borne by the party with the right of use.

(2) The laying or alteration of existing special installations can only be demanded in return for compensation and only if the use of the transport infrastructure would otherwise not be possible for the telecommunications line and the special installation can be accommodated elsewhere in accordance with its purpose.

(3) Even if the preconditions of subsections (1) and (2) exist, use of the transport infrastructure for the telecommunications line may not occur if the damage caused by the laying or alteration of the special installation is disproportionately great compared with the costs which derive for the holder of the right of use from the use of other transport infrastructure available to it.

(4) Subsections (1) to (3) apply accordingly to special installations in preparation, the construction of which is in the public interest. Compensation due to subsection (2) is only granted up to the amount of the expenses arising from the preparation.

Installations are deemed to be under preparation as soon as they have been authorised by the contracting authority on the basis of a detailed plan and, to the extent necessary, authorised by the competent authorities and the owner or the other party with a right to use the transport infrastructure to be used.

Section 133

Later special installations

(1) Later special installations must be constructed if possible in a way that means they do not disrupt the existing telecommunications lines.

(2) The owner or operator of a later special installation can demand from the holder of the right of use that a telecommunications line is laid or altered at the holder of the right of use's expense if

1. without the laying or alteration the construction of the later special installation could not take place or would be significantly more difficult,
2. the construction of the later special installation is to be entirely or predominantly undertaken on the grounds of public interest, particularly for reasons relating to the economy or due to traffic considerations by the party responsible for road maintenance or involving its predominant participation and
3. the costs of the holder of the right of use are not disproportionate.

If only the preconditions under sentence 1 no. 1 and 2 exist, a laying or alteration can still be demanded if the owner or operator of the later special installation reimburses some of the costs, so that the costs to be borne by the holder of the right of use are proportionate.

(3) If due to a later special installation the existing telecommunications line has to be equipped with protection, the costs arising for this must be borne by the holder of the right of use.

(4) If a party responsible for road maintenance transfers its share to a third party not responsible for maintenance, the costs arising for the holder of the right of use due to the laying or alteration or the protective measures must be reimbursed to the extent that they accrue to that share.

(5) The entrepreneurs responsible for other special installations than those designated in subsection (2) must bear the costs deriving from the laying or alteration of the existing telecommunications lines or from the necessary protective measures.

(6) Subsections (1) to (5) apply accordingly to later alterations of existing special installations.

Section 134

Adverse effects on pieces of land and buildings

(1) The owner of a piece of land which is not transport infrastructure within the meaning of section 125 (1) sentence 2 cannot prohibit the construction, operation and renewal of telecommunications lines on his or her piece of land and the connection of buildings located on the piece of land to very high capacity networks to the extent that

1. a line or installation secured by a right on the piece of land including the connections to the buildings is also used for the construction, operation and renewal of a telecommunications line and this does not permanently further restrict the possibility to use the piece of land,
2. the piece of land including the buildings is not unreasonably adversely affected by the use,
3. the piece of land is in public ownership, used as transport infrastructure without being dedicated as such (agricultural road), and there are no important grounds of public safety/security which stand in the way of this or
4. the piece of land is owned by a railway operator and the safety of railway operations is not adversely affected by this.

If buildings which are not located on the owner's piece of land are also supplied from that piece of land or building, sentence

1 applies accordingly.

(2) The owner of a piece of land under subsection (1) cannot prohibit it from being driven across if it is necessary to drive across it for the construction, operation and renewal of telecommunications lines on another piece of land.

(3) If the owner of the piece of land is obliged to tolerate an action under subsection (1) or subsection (2), he or she may require from the operator of the telecommunications line or the owner of the network appropriate monetary compensation if the action impairs a use of the owner's plot of land or its income beyond the degree that the owner can be expected to tolerate due to the construction, the renewal or maintenance, repair and similar measures directly relating to the operation of the telecommunications line. A one-off payment of monetary compensation can be demanded for an expanded use for the purposes of telecommunications to the extent that so far no lines were present which could have been used for the purposes of telecommunications. The entitlement under sentence 2 does not exist if the expanded use takes place exclusively to connect buildings on the used piece of land or if the piece of land is publicly owned. If the piece of land or its equipment is damaged by the exercise of the rights deriving from this provision, the operator or the owner of the network must remove the damage at its own expense. Section 840 (1) of the Civil Code must be applied. The operator of the telecommunications line or the owner of the network must draw the attention of the owner of the piece of land to the obligation to tolerate an action under subsection (1) or subsection (2).

(4) To the extent that the realisation of measures to be tolerated under subsection (1) is not possible, or is only possible at disproportionately high expense, shared use can be made of other passive network infrastructure of third parties under the preconditions of sections 138, 139 and 141.

(5) If the exercise of the right of use under section 125 for the laying of further telecommunications lines impairs interests of environmental protection, public health and safety, or urban and spatial planning, the Bundesnetzagentur can, after hearing the affected groups, order to this extent the shared use of pieces of land as is deemed necessary for the affected interests. Section 128 (4) sentence 2 and 3 applies accordingly.

Section 135 Limitation of claims

The limitation of the claims based on sections 128 to 134 is in line with the rules governing regular limitation under the Civil Code.

Division 2 Shared use of public supply networks

Section 136 Information about passive network infrastructure

(1) Owners or operators of public telecommunications networks can apply to owners or operators of public supply networks for the issuing of information on the passive network infrastructure of their public supply networks for purposes relating to the expansion of very high capacity networks. The application must cite the area in which very high capacity networks are to be developed.

(2) Owners or operators of public supply networks issue applicants under subsection (1) with the information applied for within two months of the day of receipt of the application. The information is issued under proportionate, non-discriminatory and transparent conditions.

(3) The information about passive network infrastructure of public supply networks under subsection (2) must contain at least the following data:

1. the geographical location of the site and the lines of the passive network infrastructure,
2. the type and present use of the passive network infrastructure and
3. the contact data of one or several contact persons at the owner or operator of the public supply network.

(4) The application under subsection (1) can be wholly or partly rejected to the extent there are specific indications that

1. issuing the information jeopardises the security or integrity of the supply networks, public safety/security or public health,
2. issuing the information violates confidentiality in accordance with section 148,
3. parts of critical infrastructure, particularly its information technology, are affected by the application which are demonstrably in need of particular protection and are essential for the functioning of the critical infrastructure, and the operator of the public supply network would have to take disproportionate measures when issuing the information in order to comply with the obligations to protect that infrastructure imposed on it by an act or on the basis of an act, or
4. there is a reason to refuse shared use under section 141 (2).

(5) If information applied for under subsection (1) is already provided by the single information point of the Federation in accordance with section 78 (1) no. 1, instead of the issuing of information by the owner or operator of the public supply network, it is sufficient to inform the applicant that the information can be inspected under subsection (6). The owner or operator of the public supply network can make available to the single information point of the Federation the information about the passive network infrastructure of its supply network for provision in accordance with section 78 (1) no. 1 in the context of the conditions prescribed for this by the single information point of the Federation.

(6) The single information point of the Federation makes the information received under subsection (5) sentence 2 available without delay to

1. the owners or operators of public telecommunications networks,
2. the Federal Ministry of Transport and Digital Infrastructure and
3. the territorial authorities of the Länder and the municipalities.

The information is made available for inspection electronically under proportionate, non-discriminatory and transparent conditions. Further details are regulated by the single information point of the Federation in inspection conditions which must take account in particular of the sensitivity of the stored data and the expected administrative burden.

(7) The single information point of the Federation can also use the information received under subsection (5) sentence 2 for the provision of an area-based overview in accordance with section 79 (1) no. 1.

Section 137 **On-site examination of passive network infrastructure**

(1) Owners or operators of public telecommunications networks can apply to owners or operators of public supply networks for an on-site examination of the passive network infrastructure. The application must show which network elements are affected by the expansion of very high capacity networks.

(2) Owners or operators of public supply networks must comply with reasonable applications under subsection (1) within one month of the day of receipt of the application. An application is reasonable in particular if the examination is necessary for the shared use of passive network infrastructure or the coordination of construction work.

(3) The application under subsection (1) can be wholly or partly rejected to the extent there are specific indications that

1. an on-site examination jeopardises the security or integrity of the supply networks or public safety/security or public health,
2. an on-site examination violates confidentiality in accordance with section 148,

3. parts of critical infrastructure, particularly its information technology, are affected by the application which are demonstrably in need of particular protection and are essential for the functioning of the critical infrastructure, and the operator of the public supply network would have to take disproportionate measures when carrying out the on-site examination in order to comply with the obligations to protect that infrastructure imposed on it by an act or on the basis of an act, or
4. there is a reason to refuse shared use under section 141 (2) or the coordination of construction work under section 143 (4), or the coordination of construction work is unreasonable.

(4) The granting of the on-site examination must take place under proportionate, non-discriminatory and transparent conditions. Here, attention must be paid to the respective special security requirements of the public supply network.

(5) The necessary and appropriate costs of the on-site examination are borne by the applicant. These include in particular the costs of preparation, securing and implementing the on-site examination.

Section 138 **Shared use of public supply networks**

(1) Owners or operators of public telecommunications networks can apply to owners or operators of public supply networks for shared use of the passive network infrastructure of public supply networks for the installation of components of very high capacity networks. The application must include the following information:

1. a detailed description of the project and the components of the public supply network for which shared use is applied,
2. a precise timetable for the implementation of the shared use applied for and
3. the designation of the area in which very high capacity networks are to be developed.

(2) Owners or operators of public supply networks must submit an offer for shared use of their passive network infrastructure for the installation of components of very high capacity networks to applicants under subsection (1) within two months of the receipt of the application. The offer of shared use must contain in particular the following:

1. fair and appropriate conditions for the shared use, in particular with regard to the price of provision and use of the supply network and with regard to the securities and contractual penalties to be paid,
2. the operative and organisational implementation of the shared use; the implementation covers the type and manner of the installation of components of very high capacity networks, the documentation requirements and the point in or period of time of the construction work,
3. the division of responsibilities including the possibility to commission third parties.

The offer can in particular contain agreements on liability during the installation of the network elements and on maintenance, alterations, expansion, laying and faults.

(3) The shared use must be designed in such a way that it satisfies the requirements of public safety/security and order and recognised good engineering practice.

(4) Owners or operators of public supply networks must inform the Bundesnetzagentur of contracts on shared use within two months of their conclusion.

(5) Owners or operators of public supply networks can publish reference offers for shared use via the single information point of the Federation.

Section 139 **Scope of the entitlement to shared use in the case of electricity supply networks**

- (1) The shared use of an electricity supply network also includes roof poles, gable connections and the subscriber drop.
- (2) To the extent that is necessary for the operation of the public telecommunications network, the operator of the electricity supply network must make available in return for payment a connection to the intake of operating power for the installed components of the very high capacity network.

Section 140

Revenues from shared use

Owners or operators of public supply networks can except revenues from shared use which exceed the costs within the meaning of section 149 (2) sentence 3 and arise for the owner or operator of the public supply network due to making possible the shared use of its passive network infrastructure from the calculation basis for end-user tariffs in their main activity.

Section 141

Refusal of shared use, grounds for refusal

- (1) If the owner or operator of the public supply network does not make an offer for the shared use, it must demonstrate to the applicant within the period cited in section 138 (2) sentence 1 that there are objective, transparent and proportionate reasons preventing shared use.
- (2) The application for shared use may only be refused if one of the following reasons pertains:
1. the lack of technical suitability of the passive network infrastructure for the intended accommodation of the components of very high capacity networks,
 2. the lack of space at the time of receipt of the application or in future for the intended accommodation of the components of very high capacity networks in the public supply network; the future lack of space must be explained specifically by the owner or operator of the public supply network on the basis of the investment planning for the next five years from the making of the application,
 3. specific indications that the shared use applied for jeopardises public safety/security or public health, whereby it can be assumed that public safety/security is jeopardised to the extent that parts of public supply networks are affected which are used by the Federation to implement secure communication by agencies,
 4. specific indications that the shared use applied for jeopardises the integrity or security of existing public supply networks, especially national critical infrastructure; in the case of critical infrastructure, specific indications of such a danger exist to the extent that parts of critical infrastructure, especially the information technology of critical infrastructure, are affected by the application which are demonstrably in need of particular protection and are essential for the functioning of the critical infrastructure, and the operator would not be able to take proportionate measures to make the shared use possible in the context of the obligations to protect the infrastructure imposed on it by an act or on the basis of an act,
 5. indications of an expected significant disruption to the supply network from the planned telecommunications services,
 6. the availability of viable alternatives to the shared use of passive network infrastructure that has been applied for, to the extent that the owner or operator of the public supply network offers these alternatives, they are suitable for the provision of very high capacity networks and the shared use is granted at fair and appropriate conditions; as alternatives, appropriate wholesale products for telecommunications services, access to existing telecommunications networks or the shared use of other passive network infrastructure than that applied for can be offered,
 7. the duplication of existing optical fibre networks which make available non-discriminatory, open network access.

Section 142
Information about construction work on public supply networks

(1) Owners or operators of public telecommunications networks can apply to owners or operators of public supply networks for the issuing of information about planned or ongoing construction work on public supply networks in order to consider a coordination of this construction work with construction work for the expansion of very high capacity networks. The application must show the area in which the installation of components of very high capacity networks is envisaged.

(2) Owners or operators of public supply networks issue applicants under subsection (1) with the information applied for within two weeks of the day of receipt of the application. The information is issued under proportionate, non-discriminatory and transparent conditions.

(3) The information must contain the following data on ongoing and planned construction work on passive network infrastructure of public supply networks for which an authorisation has already been issued or an authorisation procedure is pending:

1. the geographical location of the site and the type of construction work,
2. the affected network elements,
3. the estimated start and planned duration of the construction work and
4. contact data of one or several contact persons of the owner or operator of the public supply network.

If an application for authorisation is envisaged within six months of the receipt of the application for issuing of information, the information under subsections (2) and (3) must also be issued regarding this construction work.

(4) The application under subsection (1) can be wholly or partly rejected to the extent there are specific indications that

1. issuing the information jeopardises the security or integrity of the supply networks or public safety/security or public health,
2. issuing the information violates confidentiality in accordance with section 148,
3. it refers to construction work whose initially planned duration does not exceed eight weeks,
4. parts of critical infrastructure, particularly its information technology, are affected by the application which are demonstrably in need of particular protection and are essential for the functioning of the critical infrastructure, and the operator of the public supply network would have to take disproportionate measures when issuing the information in order to comply with the obligations to protect that infrastructure imposed on it by an act or on the basis of an act,
5. the coordination of construction work is unreasonable or
6. there is a reason to refuse coordination of construction work under section 143 (4).

(5) Instead of issuing the information, it is sufficient to make reference to a previous publication if

1. the party responsible for the construction work has already made the information applied for publicly available electronically or
2. access to this information is already ensured via the single information point of the Federation under section 78 (1) no. 4.

(6) Within the deadline cited in subsection (2), the information must also be transmitted to the single information point of the Federation. It makes this information available in a suitable form to other interested parties which have a justified interest in inspecting the information. Further details are regulated by the inspection conditions of the single information point of the Federation.

Section 143
Coordination of construction work

(1) Owners or operators of public supply networks can conclude agreements on the coordination of construction work with owners or operators of public telecommunications networks on the rollout of the components of very high capacity networks.

(2) Owners or operators of public telecommunications networks can apply to owners or operators of public supply networks for a coordination of construction work. The application must cite the type and scope of the construction work to be coordinated and the components of very high capacity networks to be constructed.

(3) Owners or operators of public supply networks which directly or indirectly undertake construction work financed from public funding must grant reasonable applications under subsection (2) at transparent and non-discriminatory conditions. In particular, the applications must be accepted to the extent that

1. they do not cause any additional costs for the originally planned construction work, whereby a minor time delay in the planning and minor additional expenses for the processing of the application for coordination are not regarded as additional costs of the originally planned construction work,
2. they do not impede control of the coordination of the work,
3. the application for coordination is submitted as early as possible, but at the latest one month before the submission of the final project application to the competent authorisation authority and refers to construction work whose initially planned duration does not exceed eight weeks and
4. the main purpose of the construction work which is entirely or predominantly publicly funded is not adversely affected. The main purpose is not adversely affected in particular if an optical fibre network in planning or under construction which grants open and non-discriminatory access to the network would only be slightly duplicated.

(4) The application under subsection (2) must be wholly or partly refused in particular to the extent that

1. parts of critical infrastructure, particularly its information technology, are affected by the application which are demonstrably in need of particular protection and are essential for the functioning of the critical infrastructure,
2. the operator of the public supply network would have to take disproportionate measures to coordinate the construction work in order to comply with the obligations to protect that supply network imposed on it by an act or on the basis of an act, or
3. a planned publicly funded optical fibre network which makes available non-discriminatory, open network access would be duplicated by the construction work to be coordinated.

(5) Owners or operators of public supply networks must inform the Bundesnetzagentur of coordination agreements within two months of their conclusion.

(6) The Bundesnetzagentur publishes principles on how the costs relating to the coordination of construction work are to be passed on to the owner or operator of the public telecommunications network. The Bundesnetzagentur is bound by the published principles in the context of dispute settlement under section 149.

Section 144

General information on procedural conditions for construction work

The single information point of the Federation makes the relevant information accessible which refers to the general conditions and procedures for the issuing of authorisations for construction work which is needed for the purpose of building the components of very high capacity networks. This information includes details of exceptions from authorisation obligations.

Section 145

Network infrastructure of buildings

- (1) Operators of public telecommunications networks may terminate their public telecommunications network in the rooms of the end-user. This termination is permissible only if the end-user agrees and there is as little intervention as possible in the ownership rights of third parties. The laying of new network infrastructure is permissible only to the extent that no use of existing network infrastructure is possible under subsections (2) and (3) with which the operator can provide its telecommunications service through to the end-user without perceptible quality losses. To the extent that this is necessary for the termination of the network, the owner of the building is obliged to permit the telecommunications network operator on application to connect active network elements to the electricity network. The costs arising from the connection of active network components to the electricity network must be borne by the telecommunications network operator.
- (2) Owners or operators of public telecommunications networks can, in order to connect their network in the rooms of the end-user, apply to the owners or operators of components of public telecommunications networks within the building or the owners of cabling and associated equipment in buildings at the site of the end-user to make shared use of the network infrastructure within the building. If the first concentration or distribution point of a public telecommunications network is outside the building, subsection (1) applies accordingly from this point.
- (3) Anyone who disposes of network infrastructure in buildings or up to the first concentration or distribution point of a public telecommunications networks must grant all reasonable applications for shared use under subsection (2) at fair and non-discriminatory conditions, including the fees for shared use, if a duplication of the network infrastructure is technically impossible or economically inefficient.
- (4) Newly erected buildings which are to dispose of connections for end-users of telecommunications services must be equipped inside the building up to the network termination point with suitable passive network infrastructure for very high capacity networks and an access point to these passive network elements inside the building.
- (5) Buildings which are extensively renovated and are to dispose of connections for end-users of telecommunications networks must be equipped inside the building up to the network termination point with passive network infrastructure for very high capacity networks and an access point to these passive network elements inside the building.
- (6) Single-family houses, historic monuments, holiday homes, military buildings and buildings used for the purpose of national security are not covered by subsections (4) and (5).
- (7) The competent authorities must monitor the fulfilment of the requirements stipulated under subsections (4) to (6). To the extent that use was made of the authorisation of section 151 (4) to issue ordinances, they will give consideration to the exceptions stipulated in the ordinance in so doing.
- (8) Subsections (2) and (3) do not apply to the extent that access in accordance with section 72 (6) is provided to the infrastructure within the building which is to be jointly used.

Section 146

Laying of empty conduits, safeguarding and operation of infrastructure for very high capacity networks

- (1) In the context of construction work, owners or operators of public supply networks can also lay passive network infrastructure for a very high capacity network in order to permit a shared use within the meaning of this Division or the operation of a very high capacity network.
- (2) In the context of construction work which is wholly or partly financed from public funding for the provision of transport services whose initially planned duration exceeds eight weeks, it is necessary to ensure that suitable passive network infrastructure is also laid in a needs-based manner for a very high capacity network in order to permit the operation of a very high capacity network by operators of public telecommunications networks. In the context of the building of supply infrastructure for new areas under construction, it is always necessary to ensure that suitable passive network infrastructure is also laid for a very high capacity network.
- (3) Operators of public telecommunications networks must provide the obligated party under subsection (2) on request within two months with information about the essential conditions for the operation of infrastructure to be laid or already laid under subsection (2). This includes in particular the modalities of a connection of the infrastructure to the undertaking's own public telecommunications network including the relevant handover points.

Section 147
Form of application and sequence of procedures

(1) Applications by the owners or operators of public telecommunications networks under section 72 (6) and sections 72, 82, 136 to 138, 142 and 143, 145, 153 and 154 can be submitted in writing or electronically.

(2) The obligated party must decide on complete applications in the sequence in which it receives the applications. A complete application exists when the applicant has provided all the information of relevance to the decision.

Section 148
Confidentiality of procedures, information processing and granting of access for inspection

(1) The information which is obtained in the context of procedures of this Division may only be used for the purposes for which it was provided. The information may not be forwarded to third parties, particularly not to other departments, subsidiaries or business partners of the parties to the negotiations. The parties to the procedure must uphold the operational and commercial secrets which they have obtained from the negotiations or agreements.

(2) The Federal Ministry of Transport and Digital Infrastructure can process the information which it has received in order to fulfil tasks under section 78 (1) no. 1 and 5 and on application grant the parties to the expansion of public supply networks access to inspect the processed information. Subsection (1) applies accordingly to the use of the information obtained under sentence 1.

Section 149
Regulatory aims, fee benchmarks and deadlines for national dispute settlement

(1) As the national dispute settlement body under section 211 in conjunction with section 214, the Bundesnetzagentur can be appealed to in the following cases and asked for a binding decision:

1. the owner or operator of a public supply network or other physical infrastructure which is suitable for the construction or connection of small-area wireless access points does not make an offer for shared use within the deadline cited in section 138 (2) and section 154 (2), or no agreement is reached on the conditions of shared use,
2. there is a dispute over rights, obligations or grounds for refusal stipulated in sections 136, 137, 142 and 153,
3. in the cases of section 143 (2) and (3), no agreement is reached on the coordination of the construction work within one month from the day of receipt of the application by the owner or operator of the public supply network,
4. no agreement is reached on the shared use under section 145 (2) and (3) within two months of the receipt of the application,
5. no agreement on network access under section 155 (1) is reached within two months of the receipt of the application by the operator of the public telecommunications network or
6. no agreement is reached on network access under section 72 (6) within one month of the receipt of the application by the operator of network infrastructure constructed under section 72 (1) no. 1 and 2.

(2) In the procedure under subsection (1) no. 1, the Bundesnetzagentur decides on the rights, obligations or grounds for refusal in sections 138, 139, 141 and 154. If it stipulates a fee for shared use, this must be determined in a fair and appropriate way. The basis for the level of the fee for shared use is the additional costs arising for the owner or operator of the public supply network or the other physical infrastructure as a result of making possible shared use of its passive network infrastructure or its other physical infrastructure. Further to this, it grants an appropriate surcharge as an incentive for owners or operators of public supply networks or other physical infrastructure to grant shared use.

(3) If the dispute under subsection (1) no. 1 refers to the shared use of a public telecommunications network, the Bundesnetzagentur gives consideration in addition to subsection (2) also to the regulatory aims cited in section 2 (2). Here,

the Bundesnetzagentur ensures that owners and operators of the public telecommunications network of which shared use is to be made have the possibility to cover their costs; for this, it gives consideration beyond the additional costs in accordance with subsection (2) also to the consequences of the shared use applied for on their business plan including the investment in the public telecommunications network of which shared use is made and appropriate interest payments on the investment.

(4) In the procedures under subsection (1) no. 3 and 5, the Bundesnetzagentur stipulates in its decision fair and non-discriminatory conditions including the fees of the coordination agreement or the network access applied for in each case.

(5) In the procedure under subsection (1) no. 4, the determination of the level of the fee for shared use for owners or operators of components of public telecommunications networks inside buildings or owners of cabling and associated equipment in buildings is oriented to the benchmarks of subsection (2) without any surcharge being granted. For components of a very high capacity network constructed inside a building or upgraded network infrastructure inside a building which consists entirely of optical fibre components constructed from the time of entry into force of this Act, the determination of the fee for shared use for the owners or operators of a public telecommunications network applying for shared use is oriented to the benchmarks of subsection (3) to the extent that the network infrastructure within the building of which shared use is to be made was constructed at the expense of an owner or operator of a public telecommunications network which is not an undertaking affiliated with the party which has the right to dispose of the building within the meaning of section 3 no. 69. To the extent that the telecommunications network operator desiring shared use has undertaken investment to manufacture this infrastructure, it can claim shared use free of charge unless the shared use causes an extraordinary expense due to particular technical or structural circumstances. The benchmark under sentence 3 applies only to investment which is first undertaken from the time of entry into force of this Act.

(6) To the extent that a replication of the network infrastructure is technically impossible or economically inefficient, the Bundesnetzagentur, as the national dispute settlement body, can oblige owners or operators of components of public telecommunications networks within buildings or owners of cabling and associated equipment in buildings, further to the decision under subsection (5) on the shared use under section 145 (2) and (3), to grant other undertakings access to network infrastructure within the building or up to the first concentration or distribution point of the public telecommunications network outside the building. The measures imposed can in particular contain specific determinations on the granting of access, transparency and non-discrimination as well as on the fees for access. The measures must be objective, transparent, proportionate and non-discriminatory. The consultation period under section 12 (1) and the procedure to adopt provisional measures under section 12 (7) apply accordingly. The consolidation procedure under section 12 (2), (3) and (6) applies accordingly to the extent that the measures impact trade between the Member States of the European Union and no exception exists in a recommendation or guidelines issued by the Commission under Article 34 of Directive (EU) 2018/1972. The Bundesnetzagentur as the national dispute settlement body reviews the effectiveness of the adopted measures within five years. Sentences 4 to 6 apply accordingly to the results of the review. The Bundesnetzagentur as the national dispute settlement body can withdraw intended measures under this subsection at any time.

(7) The Bundesnetzagentur takes binding decisions following receipt of the complete application in the procedure under

1. subsection (1) no. 1 and 5 within four months and
2. subsection (1) no. 2 to 4 and 6 within two months.

(8) The Bundesnetzagentur can extend the deadlines set for it for the dispute settlement by a maximum of two months in extraordinary circumstances. Special and adequate substantiation of the circumstances must be made.

(9) Applications can be submitted in writing or electronically.

Section 150

Authorisation deadlines for construction work

Authorisations for construction work which is needed for the purpose of building the components of very high capacity networks must be issued or refused within three months of receipt of a complete application. The deadline can be extended by one month if this is justified by the difficulty of the matter. The extension of the period must be substantiated and communicated in good time.

Section 151

Authorisations to issue ordinances

(1) The Federal Ministry of Transport and Digital Infrastructure is authorised to designate by ordinance without approval of the Bundesrat in consultation with the Federal Ministry for Economic Affairs and Energy passive network infrastructure which is exempted from the rights and obligations cited in sections 79, 82, 136 and 137. Sufficient substantiation must be given for the exemptions. They may only be based on the fact that the protection of parts of critical infrastructure is affected or that the passive network infrastructure is technically unsuitable for telecommunications. To the extent that the exemptions are based on the protection of parts of critical infrastructure, the ordinance requires consensus with the Federal Ministry of the Interior, Building and Community.

(2) The Federal Ministry of Transport and Digital Infrastructure is authorised to issue ordinances requiring the approval of the Bundesrat which provide for exceptions from the rights and obligations stipulated in section 142 extending beyond the grounds for refusal provided in section 142 (4) and which designate categories of construction work which must be reported to the single information point of the Federation. Such categories may only contain construction work whose initially planned duration exceeds eight weeks. Sufficient substantiation must be given for the ordinance, and it can exempt construction work or critical infrastructure that is minor in terms of scope or value. To the extent that the exemptions are based on the protection of parts of critical infrastructure, the ordinance requires consensus with the Federal Ministry of the Interior, Building and Community.

(3) The Federal Ministry of Transport and Digital Infrastructure is authorised to issue ordinances requiring the approval of the Bundesrat providing for exceptions from the rights and obligations stipulated in section 143. The exceptions can relate to the minor scope and value of the construction work or to the protection of parts of critical infrastructure. To the extent that the exemptions are based on the protection of parts of critical infrastructure, the ordinance requires consensus with the Federal Ministry of the Interior, Building and Community.

(4) The Federal Ministry of Transport and Digital Infrastructure is authorised to issue ordinances, in consensus with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, requiring the approval of the Bundesrat providing for exceptions from the rights and obligations stipulated in section 145 (4) and (5). Sufficient grounds must be given for the ordinance, and it can exempt certain categories of buildings and major renovation works if the fulfilment of the obligations would be disproportionate. The disproportionality can in particular be based on the likely costs for individual owners or on the specific type of the building.

(5) Owners and operators of public supply networks and interested parties must be given opportunity to comment within one month on the draft of an ordinance issued on the basis of subsections (1) to (4).

(6) The ordinances issued on the basis of subsections (1) to (4) must be communicated to the Commission.

Division 3

Small-area wireless access points, other physical infrastructure and open network access

Section 152

Construction, connection and operation of small-area wireless access points

(1) The competent authorities do not inappropriately restrict the construction of small-area wireless access points which correspond to the implementing measures under Article 57 (2) of Directive (EU) 2018/1972.

(2) The construction and connection of small-area wireless access points is not subject to any fees and expenses beyond those admissible in accordance with section 223. This is without prejudice to fees and expenses for authorisations under subsection (1) sentence 3 and commercial agreements.

Section 153
Information on other physical infrastructure for small-area wireless access points

(1) Owners or operators of public telecommunications networks can apply to owners or operators of other physical infrastructure for the issuing of information on the other physical infrastructure for purposes relating to the construction or connection of small-area wireless access points. The application must cite the area in which small-area wireless access points are to be developed.

(2) Owners or operators of other physical infrastructure must issue applicants under subsection (1) with the information applied for within two months of the day of receipt of the application. The information is issued under proportionate, non-discriminatory and transparent conditions.

(3) The information about other physical infrastructure of public supply networks under subsection (2) must contain at least the following data:

1. the geographical location of the site and any telecommunications lines which are being built or already exist,
2. the type and present use of the other physical infrastructure and
3. the contact data of one or several contact persons at the owner or operator of the other physical infrastructure.

(4) The application under subsection (1) can be wholly or partly rejected to the extent there are specific indications that

1. issuing the information jeopardises the security or integrity of the other physical infrastructure, public safety/security or public health,
2. issuing the information violates confidentiality in accordance with section 148,
3. issuing the information jeopardises the integrity or security of existing other physical infrastructure, especially national critical infrastructure which is demonstrably in need of particular protection, and the operator would not be able to take proportionate measures to make the shared use possible in the context of the obligations to protect the infrastructure imposed on it by an act or on the basis of an act,
4. there is a reason to refuse shared use under section 154 (4).

(5) If information applied for under subsection (1) is already provided by the single information point of the Federation in accordance with section 78 (1) no. 1, instead of information being issued by the owner or operator of the other physical infrastructure, it is sufficient to inform the applicant that the information can be inspected under subsection (6). The owner or operator of other physical infrastructure can make available to the single information point of the Federation this information for provision in accordance with section 78 (1) no. 1 in the context of the conditions prescribed for this by the single information point of the Federation.

(6) The single information point of the Federation makes the information received under subsection (5) sentence 2 available without delay to

1. the owners or operators of public telecommunications networks,
2. the Federal Ministry of Transport and Digital Infrastructure and
3. the territorial authorities of the Länder and the municipalities.

The information is made available for inspection electronically under proportionate, non-discriminatory and transparent conditions. Further details are regulated by the single information point of the Federation in inspection conditions which require the prior approval of the Federal Ministry of Transport and Digital Infrastructure. The inspection conditions must take account in particular of the sensitivity of the stored data and the expected administrative burden.

(7) The single information point of the Federation can also use the information received under subsection (5) sentence 2 for the provision of an area-based overview in accordance with section 79 (1) no. 1.

Section 154
Shared use of other physical infrastructure for small-area wireless access points

(1) Owners or operators of public telecommunications networks can apply to owners or operators of other physical infrastructure for shared use for the construction or connection of small-area wireless access points. The application must include the following information:

1. a detailed description of the project and the components of the other physical infrastructure for which shared use is applied,
2. a precise timetable for the implementation of the shared use applied for and
3. the area in which small-area wireless access points are to be developed, and their envisaged transmitter power.

(2) Owners or operators of other physical infrastructure must provide applicants under subsection (1) within two months of receipt of the application with an offer for the shared use for the construction or connection of small-area wireless access points. The offer of shared use must contain in particular the following:

1. fair and appropriate, transparent and non-discriminatory conditions for the shared use, in particular with regard to the price,
2. the type and manner of implementation and the time of provision and
3. the division of responsibilities including the possibility to commission third parties.

The offer can in particular contain agreements on liability and on maintenance, alterations, expansion, laying and faults.

(3) The shared use must be designed in such a way that it satisfies the requirements of public safety/security and order and recognised good engineering practice.

(4) If the owner or operator of the other physical infrastructure does not make an offer for the shared use, it must demonstrate to the applicant within the period cited in subsection (2) sentence 1 that there are objective, transparent and proportionate reasons preventing shared use. The application for shared use may only be refused if one of the following reasons pertains:

1. the lack of technical or structural suitability of the other physical infrastructure for the intended construction or connection of the small-area wireless access point,
2. the lack of space for the intended construction or connection of the small-area wireless access point at the time of receipt of the application,
3. specific indications that the shared use applied for jeopardises public safety/security, whereby it can be assumed that specific indications of this exist to the extent that parts of other physical infrastructure are affected which are used by the Federation to implement secure communication by agencies,
4. specific indications that the shared use applied for jeopardises the integrity or security of existing other physical infrastructure, especially national critical infrastructure which is demonstrably in need of particular protection, and the operator would not be able to take proportionate measures to make the shared use possible in the context of the obligations to protect the infrastructure imposed on it by an act or on the basis of an act,
5. the availability of viable alternatives to the shared use of other physical infrastructure that has been applied for, to the extent that the owner or operator of the other physical infrastructure offers these alternatives, they are suitable for the construction of small-area wireless access points and the shared use is granted at fair and appropriate conditions.

(5) Owners or operators of other physical infrastructure must inform the Bundesnetzagentur of contracts on shared use within two months of their conclusion.

Section 155

Open network access to publicly funded telecommunications networks and telecommunications lines, binding nature of commitments to expand in the funding

(1) Operators or owners of public telecommunications networks must grant other operators of public telecommunications networks on application non-discriminatory, open network access to publicly funded telecommunications lines or

telecommunications networks at fair and appropriate conditions.

(2) In the case of publicly funded construction measures, the entire infrastructure put in place is regarded as funded within the meaning of subsection (1). This does not apply to the infrastructure additionally included in the context of the publicly funded construction measure which the recipient of the funding or a third party has put in place at its own expense.

(3) Owners or operators of public telecommunications networks must inform the Bundesnetzagentur of contracts on open network access within the meaning of subsection (1) within two months of their conclusion.

(4) The Bundesnetzagentur publishes in consensus with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy principles on the type, scope and conditions of the open network access under subsection (1). Here, it gives consideration to Union provisions on State aids in connection with the rapid broadband rollout in the version applicable at the time.

(5) Providers of guidelines for the public funding of telecommunications lines or telecommunications networks can provide in the relevant funding guideline that reports from undertakings in an expression of interest procedure are only considered to the extent that the undertaking gives to the territorial authority or funding provider which has held or commissioned the procedure a contractual commitment to realise the reported expansion. The expression of interest procedure is undertaken by or on behalf of a territorial authority or a grant provider with a view to ensuring the expansion of telecommunications lines or telecommunications networks in a stipulated area within a certain period of time.

Part 9

Right to supply with telecommunications services

Section 156

Right to supply with telecommunications services

(1) In relation to undertakings which have been obligated by the Bundesnetzagentur under section 161 (1), (2) or (3) (operators required to provide services), end-users have an entitlement to be supplied with the telecommunications services under section 157 (2) covered by the obligation, including the necessary connection to a public telecommunications network, at their main residence or at their place of business to the extent that these are located in the area covered by the obligation. The operator required to provide services must ensure the supply within the deadline of section 161 (2) sentence 4 stipulated by the Bundesnetzagentur once the end-user has asserted his or her entitlement.

(2) Operators required to provide services must offer and deliver the service in such a way that end-users do not have to pay for equipment or telecommunications services which are not needed or not necessary for the selected telecommunications services.

(3) Operators required to provide services must provide the Bundesnetzagentur on request with appropriate and up-to-date information about their performance in terms of the supply of telecommunications services under section 157 (2). Here, the parameters, definitions and measurement procedures for the service quality are used which are set out in Annex X of Directive (EU) 2018/1972.

(4) On application from a consumer, the supply of telecommunications services in accordance with section 157 (2) can be restricted to voice communications services.

Section 157

Availability of the telecommunications services

(1) The Bundesnetzagentur monitors at regular intervals the availability of a minimum service in accordance with subsection

(2). In so doing, it takes account of the results of the survey by the single information point of the Federation in accordance with sections 80, 81 and 84. The Bundesnetzagentur reports in the annual report under section 196 on the results of the monitoring under sentence 1.

(2) Voice communications services and a fast internet access service must be available for appropriate social and economic participation within the meaning of subsection (3), including the connection necessary for this to a public telecommunications network at a fixed site.

(3) An ordinance of the Federal Ministry of Transport and Digital Infrastructure, which requires consensus with the Committee on Transport and Digital Infrastructure of the Bundestag, stipulates with the approval of the Bundesrat what requirements must be met by an internet access service and a voice communications service under subsection (2). In the stipulation of the requirements to be met by the internet access service under sentence 1, account is taken in particular of the minimum bandwidth, upload rate and latency used by at least 80 per cent of the consumers in the federal territory, and other national circumstances such as the effects of the stipulated quality on incentives for private-sector broadband expansion and measures to promote broadband. The internet access service must always make possible the services listed in Annex V of Directive (EU) 2018/1972 in the version in force at the time, working from home including the usual extent of encryption procedures, and a use of online content services as is usual for consumers on the market. The upload rate and latency to be stipulated under sentence 1 can be lower than the values used by 80 per cent of the consumers in the federal territory if it is actually demonstrated that the services cited in sentence 3 also work for the end-user at lower requirements. In an ordinance under sentence 1 shorter deadlines than those cited in section 160 and section 161 can be stipulated if a digitisation of procedures has brought about an acceleration.

(4) The ordinance under subsection (3) must be enacted within six months of the entry into force of this provision. The Federal Ministry of Transport and Digital Infrastructure must review the stipulated requirements annually. It informs the Committee on Transport and Digital Infrastructure of the Bundestag about the findings.

(5) The Federal Ministry of Transport and Digital Infrastructure can transfer the authorisation under subsection (3) and the obligations under subsection (4) by ordinance to the Bundesnetzagentur. An ordinance of the Bundesnetzagentur under sentence 1 requires consensus with the Federal Ministry of Transport and Digital Infrastructure and the Committee on Transport and Digital Infrastructure of the Bundestag, and the approval of the Bundesrat. The findings of the review report of the Bundesnetzagentur under subsection (4) requires consensus with the Federal Ministry of Transport and Digital Infrastructure and the Committee on Transport and Digital Infrastructure of the Bundestag.

Section 158

Affordability of the telecommunications services

(1) Telecommunications services under section 157 (2), including the connection necessary for this to a public telecommunications network at a fixed site, must be offered to consumers at an affordable price. Following a hearing of the affected groups, the Bundesnetzagentur publishes principles on the determination of affordable prices for telecommunications services under section 157 (2), including the connection necessary for this to a public telecommunications network at a fixed site, within six months of the entry into force of this arrangement.

(2) The Bundesnetzagentur monitors the development and level of the prices for telecommunications services under section 157 (2), including the connection necessary for this to a public telecommunications network at a fixed site.

Section 159

Contribution by undertakings to the supply of telecommunications services

Each provider which is active on the product market of the supply of telecommunications services under section 157 (2) in the area of validity of this Act is obliged to contribute to ensuring that the supply of telecommunications services under sections 157 and 158 can be provided. The obligation under sentence 1 must be met in line with the provisions of this Division.

Section 160

Determination of undersupply

(1) If the Bundesnetzagentur determines in the context of its monitoring in accordance with section 157 (1) and section 158 (2) that one of the following circumstances exists, it will publish this finding within two months of obtaining the first knowledge of this:

1. a supply of telecommunications services under section 157 (2) is not being provided at present or in the objectively foreseeable future in an appropriate or adequate manner or at an affordable retail price under section 158 (1),
2. there are concerns that a supply of telecommunications services under section 157 (2) will no longer be ensured in future.

The Bundesnetzagentur can exceed the deadline set for the publication of the finding of undersupply under sentence 1 by up to one month in extraordinary circumstances. Adequate substantiation of the circumstances must be given.

(2) If the Bundesnetzagentur finds in the context of its determination under subsection (1) in the area covered by the determination an actual need for a supply with the telecommunications services which are at least to be available under section 157 (2), it will announce when publishing the determination of undersupply that it will proceed in line with the provisions of section 161 (2) to the extent that no undertaking commits to the Bundesnetzagentur in writing or electronically within one month following the publication of the determination of undersupply that it will take on the obligation of supplying telecommunications services under section 157 (2) and section 158 (1) without compensation under section 162.

Section 161

Obligations to supply telecommunications services

(1) If the Bundesnetzagentur arrives at the view that the commitment submitted under section 160 (2) is suitable to ensure the supply of telecommunications services under section 157 (2) and section 158 (1), the Bundesnetzagentur can declare the commitment to be binding by administrative order. The administrative order states that the Bundesnetzagentur, subject to the proviso of sentence 4, will not make use of its powers under the following subsections in relation to the participating undertakings. The administrative order can be limited in time. The Bundesnetzagentur can revoke the administrative order under sentence 1 and resume the procedure if

1. the actual situation has subsequently changed with regard to an essential point for the administrative order,
2. the participating undertakings have not complied with their commitments,
3. the Bundesnetzagentur alters the requirements to be met by telecommunications services under section 157 (3) or section 158 (1) or
4. the administrative order is based on incomplete, erroneous or misleading information from the parties.

(2) If the Bundesnetzagentur has determined that an undersupply exists and that there is an actual need in accordance with section 160 and has not declared any suitable commitment under subsection (1) to be binding, the Bundesnetzagentur will, following a hearing of the relevant undertakings, oblige one or several of these undertakings to provide telecommunications services under section 157 (2) and section 158 (1), including the connection to a public telecommunications network necessary for this. The imposition of the obligation on one or several of the relevant undertakings must take place within three months after the expiry of the one-month deadline to submit commitments not requiring compensation under section 160 (2). The deadline under sentence 2 can be exceeded by one month if this is justified by the complexity of the matter. The party required to provide services must commence the establishment of the preconditions for the provision of the telecommunications services under section 157 (2) covered by the obligation at the latest at the end of three months from the time of the imposition of the obligation and provide these telecommunications services within an appropriate deadline set by the Bundesnetzagentur which should not usually exceed three months. In the context of the hearing, the Bundesnetzagentur can oblige the undertakings to present and substantiate its information necessary for the decision under sentence 1. Those undertakings will particularly come into consideration for an obligation under sentence 1 which already operate suitable telecommunications networks in the vicinity of the relevant connections and can provide the supply of telecommunications services under section 157 (2) in a cost-efficient manner. The Bundesnetzagentur can order the provision of the supply of telecommunications services under section 157 (2) for several areas. The procedure to impose an obligation on a suitable undertaking must be efficient, objective, transparent and non-discriminatory.

(3) The Bundesnetzagentur can exceptionally oblige one or several relevant undertakings to connect end-users via a line making shared use of existing telecommunications lines and supply them with services under section 157 (2) if this is reasonable. This is without prejudice to the finding of an undersupply under section 160 (1). The line-based connection is generally reasonable if suitable empty conduit infrastructure is adjacent to the piece of land to be supplied. The procedure to oblige one or several undertakings to provide a line-based connection corresponds to the procedure of subsection (2). The Bundesnetzagentur publishes its decision including the reasons for it.

(4) Significant changes which can impact the supply of telecommunications services under section 157 (2) and section 158 (1) must be notified to the Bundesnetzagentur by parties required to provide services in good time in advance. In particular, the sale of a significant part or the entirety of the installations of the subscriber line network to another legal person with a different owner must be notified.

Section 162

Compensation for the supply of telecommunications services

(1) The Bundesnetzagentur grants financial compensation to the party required to provide services under section 161 (2) or (3) following the end of the calendar year in which the party required to provide services experiences a deficit in the provision of the supply of telecommunications services under section 157 (2) and section 158 (1) in response to a substantiated application in line with the following provisions to the extent that the ascertained net costs represent an unreasonable burden.

(2) The Bundesnetzagentur ascertains the likely level of net costs for the mandatory provision of the telecommunications services under section 157 (2) and 158 (1) as the difference between the net costs of the party required to provide services for the operation without the obligation to provide services and the net costs for the operation complying with the obligation to provide services in accordance with Annex VII of Directive (EU) 2018/1972 in the version applicable at the time.

(3) The Bundesnetzagentur examines the cost calculation of the party required to provide services and other information on which the calculation of the net costs is based.

(4) The Bundesnetzagentur determines whether the ascertained net costs of the provision of the supply of telecommunications services represent an unreasonable burden. If this is the case, the Bundesnetzagentur stipulates the level of compensation. The level of compensation derives from the amount of compensation calculated by the Bundesnetzagentur plus normal market-based interest payments. The interest payments commence on the day following the end of the calendar year cited in subsection (1).

(5) The Bundesnetzagentur publishes

1. the principles of the net cost calculation under subsection (2), including the details of the method to be used,
2. the results of the net cost calculation under subsection (2) and
3. the findings of the examination under subsection (3).

When the results under sentence 1 no. 2 and 3 are published, the operational and commercial secrets of the relevant undertakings must be upheld.

Section 163

Levy procedure

(1) If the Bundesnetzagentur grants compensation under section 162 for the provision of the supply of telecommunications services in accordance with section 157 (2) and section 158 (1), each undertaking which is obligated under section 159 contributes to this compensation via a levy.

(2) The level of the levy is basically set in line with the ratio of the annual domestic turnover of the respective undertaking to the total of the annual domestic turnover of all obligated parties on the relevant product market and must give adequate consideration to an in-house provision of the supply of telecommunications services under section 161 (1). Here, the

domestic turnover of the calendar year for which compensation is granted under section 162 should be used. The level of the levy is calculated separately for each undertaking and may not be pooled. If an undertaking required to pay the levy cannot be charged with the levy accruing to it, the shortfall must be paid by the other obligated parties in line with the ratio of their shares.

(3) The undertakings inform the Bundesnetzagentur of their turnover on the relevant product market of the supply of telecommunications services under section 157 (2) annually in each case on demand. If this communication does not take place, the Bundesnetzagentur can undertake an estimate.

(4) When the turnover is determined, section 36 (2) and section 38 of the Act against Restraints of Competition apply accordingly.

(5) Following the end of the calendar year for which compensation under section 162 (1) is paid, the Bundesnetzagentur stipulates the amount of the levy to be paid by the undertakings obligated to pay the levy and informs the affected undertakings of this.

(6) The Bundesnetzagentur can oblige providers which supply number-independent interpersonal telecommunications services in the area of validity of this Act to contribute to the compensation under subsection (1) if the preconditions under section 21 (2) no. 1 exist. It must calculate the share of the undertakings obligated under sentence 1 in relationship to the parties obligated under section 159. Subsections (2) to (5) apply accordingly, whereby the number of monthly active users in Germany replaces the annual domestic turnover as the assessment basis.

(7) The undertakings obligated to pay a levy under subsection (1) or subsection (6) must pay to the Bundesnetzagentur the levies stipulated by the Bundesnetzagentur accruing to them within one month of the receipt of the decision on the stipulation. If an undertaking obligated to pay a levy is more than three months behind with the payment of the levy, the Bundesnetzagentur will issue a decision confirming the delayed payment and will enforce the collection of the payments.

(8) Undertakings are exempted from the obligation to pay the levy if their annual domestic turnover is below a turnover threshold set by the Bundesnetzagentur for micro, small and medium-sized enterprises. When setting this threshold, the Bundesnetzagentur takes account of provisions of Union law concerning the definition of micro, small and medium-sized enterprises. On application, the Bundesnetzagentur can exempt further undertakings under section 159 from the obligation to pay the levy in the event of unfair hardship.

(9) The Bundesnetzagentur must, when applying subsections (1) to (8), comply with the principles of transparency, the least possible market distortion, non-discrimination and proportionality in accordance with the principles cited in Annex VII Part B of Directive (EU) 2018/1972 in the version applicable at the time. The Bundesnetzagentur publishes the principles of the calculation of the levy for the compensation for net costs. The Bundesnetzagentur also publishes, whilst upholding operational and commercial secrets, an annual report in which the details of the net costs calculated under section 162 for the supply of telecommunications services under section 157 (2) and section 158 (1) are cited and the levies paid by all participating undertakings are listed, including any market advantages which have accrued to the parties obliged to provide services as a consequence of the obligation to provide services.

Part 10

Public safety/security and emergency preparedness

Division 1

Public safety/security

Section 164

Emergency call

(1) Anyone who provides publicly available number-based interpersonal telecommunications services for the holding of outgoing calls to one or several numbers of the national or international numbering plan must make arrangements so that end-users can make free-of-charge calls which are initiated either by the dialling of the uniform European emergency number 112 or the additional national emergency number 110 or the sending of corresponding signals (emergency calls). Anyone who provides such publicly available number-based interpersonal telecommunications services, makes access possible to such services, or operates telecommunications networks which are used for these services including the forwarding of calls, must ensure or cooperate to the necessary extent to ensure that emergency calls can be made at all times without delay to the locally responsible emergency call answering position. The parties obligated under sentences 1 and 2 must ensure that the emergency call answering position is also provided with the following along with the emergency call:

1. the telephone number of the subscriber line from which the emergency call originates and
2. the data needed to ascertain the location from which the emergency call is made.

Emergency calls must be connected as a priority over other calls; they are equivalent to priority calls under section 186 (2) sentence 1. Data which are necessary in line with the ordinance under subsection (5) to prosecute the abuse of the emergency call may also be provided to the emergency call answering position after a delay. The transmission of the data under sentences 3 and 5 takes place free of charge. The costs arising for emergency calls are borne by each provider of a telecommunications service itself; this is without prejudice to the charging of fees for wholesale products.

(2) With regard to emergency calls which are initiated using a facsimile machine, subsection (1) applies accordingly.

(3) In order to ensure equivalent emergency call communications for people with disabilities, it is necessary to ensure that emergency calls can be made free of charge when a text or video relay service under section 51 (4) is used. As far as is technically possible, the requirements of subsection (1) sentence 3 and 6 apply accordingly.

(4) Providers of number-independent interpersonal telecommunications services which make possible direct communications with the locally responsible emergency call answering position must ensure that the data needed to ascertain the location are transmitted. The costs arising for these emergency calls are borne by each provider of a telecommunications service itself; this is without prejudice to the charging of fees for wholesale products.

(5) The Federal Ministry for Economic Affairs and Energy is authorised, in consensus with the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry of Labour and Social Affairs, to issue ordinances with the approval of the Bundesrat

1. on the principles for the stipulation of catchment areas of emergency call answering positions and their subdivisions by the Land and municipal authorities responsible for emergency calls and on the principles of the coordination procedure between these authorities and the affected network operators, to the extent that these principles are needed for the establishment of emergency calls,
2. on the making of emergency calls to the respective locally responsible emergency call answering position or substitute emergency call answering position,
3. on the scope of the performance characteristics to be delivered for emergency calls, including
 - a) the transmission of the data under subsection (1) sentence 3 and
 - b) admissible deviations from the data to be transmitted under subsection (1) sentence 3 no. 1 in unavoidable special cases on technical grounds,
4. on the provision and transmission of data which are suitable to enable the emergency call answering position to prosecute the abuse of emergency calls,
5. on the establishment of emergency calls by automated procedures,
6. on ensuring the equivalence of emergency call communications for people with disabilities and
7. on the tasks of the Bundesnetzagentur in the areas cited in nos. 1 to 6, particularly with regard to the stipulation of criteria for the precision and reliability of the data needed to ascertain the location from which the emergency call is made.

The provisions of this subsection are without prejudice to Land regulations on emergency call answering positions which do

not refer to obligations within the meaning of subsections (1) to (4).

(6) The Bundesnetzagentur stipulates in a Technical Guideline the technical details of the regulatory subjects cited in subsection (5) sentence 1 nos. 1 to 6, in particular the criteria for the precision and reliability of the information about the location from which the emergency call originates; in so doing, it takes account of the provisions of the ordinance under subsection (5). The Bundesnetzagentur produces the Technical Guideline with the participation of

1. the associations of the providers of telecommunications services and operators of telecommunications networks affected by subsections (1) to (4),
2. the representatives of the operators of emergency call answering positions nominated by the Federal Ministry of the Interior, Building and Community and
3. the manufacturers of the technical equipment used in the telecommunications networks and emergency call answering positions.

The stipulations in the Technical Guideline must take account of international standards; deviations from the standards must be substantiated. The parties obligated under subsections (1) to (4) must fulfil the requirements of the Technical Guideline at the latest one year after its promulgation, to the extent that the Technical Guideline does not stipulate any longer transitional period for certain obligations. In the event of an alteration to the Technical Guideline, fault-free technical equipment designed in line with this Technical Guideline must fulfil the altered requirements at the latest three years after their entry into force.

Section 164a **Public warnings**

(1) Operators of public mobile communications networks must

1. maintain technical equipment for warnings of impending or spreading major emergencies and disasters which
 - a) are triggered via the central warning system of the Federation by the hazard prevention authorities and civil emergency preparedness and disaster relief authorities and
 - b) can be sent to receive-ready mobile communications terminal equipment which is located in the geographical area stipulated by the authority triggering the warning and
2. make organisational arrangements to ensure the possibility to transmit warnings under no. 1 at all times without delay.

(2) Operators of public mobile communications networks must send warnings under subsection (1) to all mobile communications terminal equipment in the geographical area stipulated by the authority triggering the warning.

(3) Providers of publicly available mobile number-based interpersonal telecommunications services

1. cooperate to the necessary extent on ensuring that warnings under subsection (1) can be transmitted at all times and without delay to the end-users in the stipulated geographical area and
2. inform their end-users about the preconditions for the receipt of warnings under subsection (1).

(4) The Federal Ministry for Economic Affairs and Energy is authorised, in consensus with the Federal Ministry of the Interior, Building and Community and the Federal Ministry of Transport and Digital Infrastructure, to issue ordinances with the approval of the Bundesrat making rules

1. on the basic technical requirements for the transmission of warnings in the public mobile communications network, including the security requirements to be observed,
2. on the basic organisational parameters for the transmission of warnings, including reachability and reaction times,
3. on the scope of the performance characteristics to be delivered in the transmission of warnings, including the data processed thereby,

4. on the details of the obligations for providers under subsection (3) and
5. on the tasks of the Bundesnetzagentur regarding the areas cited in nos. 1 to 4.

(5) The Bundesnetzagentur stipulates in a Technical Guideline the technical details of the regulatory subjects cited in subsection (4) no. 1 to 4; in so doing, it takes account of the provisions of the ordinance under subsection (4). The Bundesnetzagentur produces the Technical Guideline with the participation of

1. the associations
 - a) of the operators of public mobile communications networks obligated by subsections (1) and (2),
 - b) of the providers of publicly available mobile number-based interpersonal telecommunications services obligated under subsection (3),
 - c) of the manufacturers of the technical equipment used in the mobile communications networks and
 - d) of the manufacturers of the mobile communications terminal equipment,
2. of the Federal Office of Civil Protection and Disaster Assistance,
3. of the representatives nominated by the Federal Office of Civil Protection and Disaster Assistance of the authorities cited in subsection (1) no. 1 letter a and
4. of the Federal Office for Information Security with regard to the technical requirements in subsection (4) no. 1.

The stipulations in the Technical Guideline must take account of international standards; deviations from the standards must be substantiated. The parties obligated under subsections (1) to (3) must fulfil the requirements of the Technical Guideline at the latest one year after its promulgation, to the extent that the Technical Guideline does not stipulate any different transitional period for certain obligations.

(6) Necessary expenses which arise for the operators of public mobile communications networks due to the implementation of the requirements of subsection (1) must be reimbursed on application. The assessment of the reimbursement of expenses must be based on the costs actually arising for the obligated party. The Bundesnetzagentur decides on the applications for the reimbursement of expenses. The costs arising from the transmission of the warnings under subsection (2) are borne by each operator itself. The costs arising for the sending of information under subsection (3) are borne by each provider itself.

Section 165

Technical and organisational safeguards

(1) Anyone who provides or helps to provide telecommunications services must make appropriate technical arrangements and take other measures

1. to protect the confidentiality of communications and
2. against personal data breaches.

Here, account must be taken of the best available technology.

(2) Anyone who operates a public telecommunications network or provides publicly available telecommunications services must make appropriate technical and organisational arrangements and take other measures in the telecommunications and data processing systems operated for this

1. to protect against disruption which results in substantial impairment to telecommunications networks and services, also where this disruption can be caused by external attacks and the effects of disasters, and
2. to manage the risks to the security of telecommunications and services.

In particular, measures, including if necessary measures in the form of encryption, must be taken to protect telecommunications and data processing systems against unauthorised access and to minimise the effects of security breaches on users, other telecommunications networks and services. In these measures, account must be taken of the best available technology.

(3) As an appropriate measure within the meaning of subsection (2), operators of public telecommunications networks and providers of publicly available telecommunications services can deploy systems to detect attacks within the meaning of section 2 (9) b of the Act on the Federal Office for Information Security. Operators of public telecommunications networks and providers of publicly available telecommunications services with enhanced risk potential must deploy corresponding systems to detect attacks. The systems deployed to detect attacks must be in a position to detect dangers or threats by means of continuous and automated detection. They should also be able to avert detected dangers or threats and to provide for appropriate remedies for disruption which has taken place. The Bundesnetzagentur can stipulate further details in the catalogue of security requirements under section 167.

(4) Critical components within the meaning of section 2 (13) of the Act on the Federal Office for Information Security may only be deployed by an operator of public telecommunications networks with an enhanced risk potential if they have been checked and certified by a recognised certification body before their first deployment.

(5) Anyone operating a public telecommunications network must take measures to ensure the orderly operation of its networks and thus to ensure the ongoing availability of the services provided via these networks.

(6) Technical arrangements and other safeguards are deemed reasonable if the technical and economic effort required is not disproportionate to the importance of the telecommunications networks or services to be protected. Section 62 (1) of the Federal Data Protection Act applies accordingly.

(7) Where a site or technical facilities are shared, each party must meet the obligations under subsections (1) to (5) to the extent that certain obligations cannot be assigned to a particular party.

(8) In the case of the occurrence of a security incident or the determination of a substantial danger, the Bundesnetzagentur can order measures to remedy the security incident or to avert the danger and the deadlines for compliance.

(9) The Bundesnetzagentur can order that the operators of public telecommunications networks or the providers of publicly available telecommunications services subject themselves to a review by a qualified independent body or a competent national authority to ascertain whether the requirements under subsections (1) to (7) are met. Notwithstanding sentence 1, operators of public telecommunications networks with an increased risk potential are required to subject themselves every two years to a review by a qualified independent body or a competent national authority to ascertain whether the requirements under subsections (1) to (7) are met. The Bundesnetzagentur stipulates the timing of the first review. The party obligated under sentences 1 and 2 must transmit without delay a copy of the review report to the Bundesnetzagentur and the Federal Office for Information Security to the extent that the review has not been undertaken by the latter. The obligated party bears the costs of this review. The assessment of the review and a related determination of shortcomings in the security concept under section 166 is undertaken by the Bundesnetzagentur in consensus with the Federal Office for Information Security.

(10) The Bundesnetzagentur informs without delay the Federal Office for Information Security of identified failures to fulfil the security requirements in information technology and the remedies demanded in this context by the Bundesnetzagentur.

(11) The Bundesnetzagentur can make use of the support of a computer security incident response team in accordance with Article 9 of Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 241 of 19 July 2016, p. 1; L 33 of 7 February 2018, p. 5) in the context of the assigned tasks. The Bundesnetzagentur can furthermore consult the Federal Office for Information Security, the competent national prosecution authorities and the Federal Commissioner for Data Protection and Freedom of Information.

Section 166

Security officer and security concept

(1) Anyone who operates a public telecommunications network or provides publicly available telecommunications services must

1. designate a security officer,
2. nominate a contact person based in the European Union and
3. produce a security concept showing

- a) what public telecommunications network is operated and what publicly available telecommunications services are provided,
- b) what risks can be assumed to exist and
- c) what technical arrangements or other safeguards are made or planned to fulfil the obligations deriving from section 165 (1) to (7) as specified by the catalogue of security requirements under section 167; to the extent that the catalogue only prescribes security targets, it must be shown that the measures taken fully attain the respective security target.

(2) Anyone who operates a public telecommunications network must present the Bundesnetzagentur with the security concept without delay following the commencement of network operations. Anyone who provides publicly available telecommunications services can be obliged by the Bundesnetzagentur to present the security concept.

(3) Along with the security concept, a declaration must be presented stating that the technical arrangements and other safeguards described in the security concept have been, or will be, implemented without undue delay.

(4) If the Bundesnetzagentur finds shortcomings in the security concept itself or in the course of its implementation, it may require their elimination without delay. To the extent that the situation on which the security concept is based changes, the party obligated under subsection (2) must adapt the security concept without delay following the change and present it once again to the Bundesnetzagentur, making reference to the changes.

(5) The Bundesnetzagentur regularly reviews the implementation of the security concept. The review must take place at least every two years.

Section 167

Catalogue of security requirements

(1) The Bundesnetzagentur stipulates by general administrative order, in consensus with the Federal Office for Information Security and the Federal Commissioner for Data Protection and Freedom of Information, in a catalogue of security requirements for the operation of telecommunications and data processing systems and for the processing of personal data:

1. details of the technical arrangements and other measures to be made and taken under section 165 (1) to (7) taking account of the different levels of potential risk faced by the public telecommunications networks and publicly available telecommunications services,
2. which functions are critical functions within the meaning of section 2 (13) sentence 1 no. 3 letter b of the Act on the Federal Office for Information Security which are realised by critical components with the meaning of section 2 (13) of the Act on the Federal Office for Information Security, and
3. who is to be categorised as an operator of public telecommunications networks and a provider of publicly available telecommunications services with enhanced risk potential.

The catalogue of security requirements under sentence 1 can also contain requirements on the disclosure and interoperability of interfaces of network elements including technical standards to be complied with. The Bundesnetzagentur gives the manufacturer, the associations of operators of public telecommunications networks and the associations of providers of publicly available telecommunications services an opportunity to submit comments.

(2) The obligated parties must comply with the requirements of the catalogue at the latest one year after its entry into force unless a different deadline for compliance is stipulated in the catalogue.

Section 168

Communication of a security incident

(1) Anyone who operates a public telecommunications network or provides publicly available telecommunications services must inform without delay the Bundesnetzagentur and the Federal Office for Information Security of a security incident with

substantial effects on the operation of the networks or the provision of the services. Section 42 (4) and section 43 (4) of the Federal Data Protection Act apply accordingly.

(2) The extent of the effects of a security incident is – where available – to be assessed on the basis of the following criteria in particular:

1. the number of the users affected by the security incident,
2. the duration of the security incident,
3. the geographical extent of the area affected by the security incident,
4. the degree of impairment of the telecommunications network or of the service,
5. the degree of the effects on economic and social activity.

(3) The communication under subsection (1) sentence 1 must contain the following information:

1. information about the security incident,
2. information about the criteria under subsection (2),
3. information about the affected systems and
4. information about the presumed or actual cause.

(4) The Bundesnetzagentur stipulates details of the communication procedure. The Bundesnetzagentur can demand a detailed report on the security incident and the remedies taken.

(5) If necessary, the Bundesnetzagentur informs the national regulatory authorities of the other Member States of the European Union and the European Union Agency for Cybersecurity about the security incident. The Bundesnetzagentur can inform the public or oblige the parties obligated under subsection (1) sentence 1 to do so if it concludes that it is in the public interest to make the security incident known.

(6) In the case of a particular and substantial risk of a security incident, the parties obligated under subsection (1) sentence 1 inform the users who are potentially affected by this danger about all the possible preventative measures or remedies which the users can take and if appropriate about the danger itself. Section 8e of the Act on the Federal Office for Information Security applies accordingly.

(7) The Bundesnetzagentur provides the Commission, the European Union Agency for Cybersecurity and the Federal Office for Information Security once a year with a summary report of the notifications received and the remedies taken.

Section 169

Data and information security

(1) Anyone who provides publicly available telecommunications services must in the case of a personal data breach inform without delay the Bundesnetzagentur and the Federal Commissioner for Data Protection and Freedom of Information about the violation. If it is to be assumed that the personal data breach severely affects the rights or interests worthy of protection of end-users or other persons, the provider of the telecommunications service must additionally inform those affected without delay of this violation. In cases in which it is proven in the security concept that the personal data affected by the breach are secured by appropriate technical arrangements, particularly being stored using an encryption procedure recognised as being secure, it is not necessary to inform those affected. Irrespective of sentence 3, the Bundesnetzagentur can oblige the provider of the telecommunications service to inform the affected parties giving consideration to the likely negative effects of the personal data breach. Apart from this, section 42 (4) and section 43 (4) of the Federal Data Protection Act apply accordingly.

(2) The communication under subsection (1) sentence 1 must contain at least:

1. the nature of the personal data breach,
2. information about the points of contact from which further information is available, and

3. recommendations for measures which restrict potential negative effects of the personal data breach.

In the communication to the Bundesnetzagentur and the Federal Commissioner for Data Protection and Freedom of Information, the provider of the telecommunications service must also present the consequences of the personal data breach and the measures intended or taken.

(3) The providers of telecommunications services must keep a register of the violations of the protection of personal data containing information about the following:

1. the circumstances of the violations,
2. the effects of the violations and
3. the remedies taken.

This information must be sufficient to enable the Bundesnetzagentur and the Federal Commissioner for Data Protection and Freedom of Information to examine whether subsections (1) and (2) were complied with. The register contains only the information necessary for this purpose and does not have to include violations which took place more than five years ago.

(4) If the provider of the telecommunications service under subsection (1) sentence 1 becomes aware of disruption deriving from users' data processing systems, it must inform the users about this without delay to the extent that it already knows who the users are. Where technically possible and reasonable, it must refer the users to appropriate, effective and accessible technical means by which they can identify and remove this disruption. The provider of the telecommunications service must divert the parts of the data traffic from and to a user from whom disruption derives to the extent necessary to be able to inform the user about the disruption.

(5) If the provider of the telecommunications service under subsection (1) sentence 1 is informed by the Federal Office for Information Security about specific significant dangers deriving from or affecting users' data processing systems, it must inform the affected users about this without delay to the extent that it knows who the users are. Where technically possible and reasonable, it must refer the users to appropriate, effective and accessible technical means by which they can identify and avert these dangers. If the provider of the telecommunications service under subsection (1) sentence 1 becomes aware of dangers deriving from or affecting users' data processing systems, it can inform the users about this to the extent that it knows who the users are. Where technically possible and reasonable, it can refer the users to appropriate, effective and accessible technical means by which they can identify and avert these dangers.

(6) The provider of the telecommunications service may in the case of disruption restrict, divert or stop the use of the telecommunications service until the disruption is ended to the extent necessary to remove or prevent an impairment of the telecommunications and data processing systems of the provider of telecommunications services, a user within the meaning of subsection (4) or another user and the user itself does not remove the disruption or it is unlikely that the user will remove the disruption without delay.

(7) The provider of the telecommunications service may restrict, divert or stop the data traffic from and to sources of disruption to the extent necessary to avoid disruption to the telecommunications and data processing systems of the users.

(8) Subject to technical implementing measures of the Commission under Article 4 (5) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201 of 31 July 2002, p. 37; L 241 of 10 September 2013, p. 9; L 162 of 23 June 2017, p. 56), as last amended by Directive 2009/136/EC (OJ L 337 of 18 December 2009, p. 11), the Bundesnetzagentur can prescribe guidelines regarding the format, the procedure and the circumstances in which a communication about a personal data breach is necessary.

Section 170

Implementation of intercepts, issuing of information

(1) Anyone who operates a telecommunications system which provides publicly available telecommunications services must

1. from the time of the entry into operation, maintain technical devices at the operator's own expense to implement statutorily provided measures to intercept telecommunications and make organisational arrangements for their immediate implementation,
2. in cases in which the interceptability can only be ensured by the interaction of two or several telecommunications

systems of one or several operators, provide from the time of entry into operation the necessary automatic control possibilities in its telecommunications system to record and transmit the telecommunication to be intercepted and to enable such controls,

3. without delay after the entry into operations
 - a) inform the Bundesnetzagentur that it has made the arrangements under no. 1, and
 - b) nominate to the Bundesnetzagentur a person authorised to take delivery of documents in Germany to whom the service of orders to intercept telecommunications and the related administrative orders and written documents destined for that person can be made,
4. provide the Bundesnetzagentur free of charge with proof that its technical devices and organisational arrangements under no. 1 are in compliance with the provisions of the ordinance under subsection (5) and the Technical Guideline under subsection (6); to this end, it must without delay, at the latest one month after entry into service
 - a) send the Bundesnetzagentur the documents needed there to prepare the examinations to be conducted by the Bundesnetzagentur in the context of the proof, and
 - b) agree with the Bundesnetzagentur an examination date for the provision of this proof;in the case of the examinations necessary for the proof, it must support the Bundesnetzagentur,
5. grant the Bundesnetzagentur in response to its specific demand in particular to remove malfunctions a renewed examination free of charge of its technical and organisational arrangements and
6. accept the setting up and operation of technical means of the bodies authorised to intercept telecommunications for the implementation of measures under sections 3, 5 and 8 of the Article 10 Act or under sections 6, 12 and 14 of the Federal Intelligence Service Act on its premises and grant officers of the body responsible for these measures and in the case of measures under 3, 5 and 8 of the Article 10 Act the members and staff of the G 10 Commission (section 1 (2) of the Article 10 Act) access to these technical means to fulfil their statutory tasks.

(2) Anyone providing publicly available telecommunications services and using an operator of a telecommunications system for this must

1. make sure when selecting the operator of the telecommunications system used for this that the latter can implement orders to intercept telecommunications without delay in line with subsection (1) and the ordinance under subsection (5) and the Technical Guideline under subsection (6), and
2. inform the Bundesnetzagentur without delay following the commencement of its service about
 - a) which telecommunications services it is providing,
 - b) by whom interception orders affecting its users will be implemented and
 - b) which body located in Germany can be served with orders destined to intercept telecommunications and related administrative orders and written documents.

(3) The Bundesnetzagentur must be informed without delay of alterations to the data for the communications under subsection (1) no. 3 letter b and subsection (2) no. 2. In cases in which no provisions under subsection (6) are yet available, the obligated party must design the technical devices under subsection (1) no. 1 and 2 in agreement with the Bundesnetzagentur, which makes corresponding stipulations in consultation with the authorised bodies.

(4) Subsections (1) to (3) do not apply to the extent that the ordinance under subsection (5) provides for exceptions for the telecommunications system. This is without prejudice to section 100a (4) sentence 1 of the Code of Criminal Procedure, section 2 (1) a sentence 1 no. 1 to 3 of the Article 10 Act, section 51 (6) sentence 1 of the Federal Criminal Police Office Act, section 8 (1) sentence 1 of the Federal Intelligence Service Act and corresponding rules under Land law on preventative telecommunications intercepts by the police.

(5) The Federal Government is authorised, via ordinances with the approval of the Bundesrat,

1. to make rules
 - a) on the basic technical requirements and the organisational principles for the implementation of intercepts and the issuing of information including the implementation of intercepts and the issuing of information by

an aide commissioned by the obligated party and the storage of data relating to the orders and the parties obliged to cooperate with technical investigative measures in the case of mobile communications terminal equipment under section 171,

- b) on the regulatory framework for the Technical Guideline under subsection (6),
- c) for the proof under subsection (1) no. 4,
- d) for the renewed examination under subsection (1) no. 5,
- e) for the details of the obligations to accept measures under subsection (1) no. 6 and
- f) for the details of the obligations relating to the copy under subsection (11) and

2. to determine

- a) the cases and conditions in which it is temporarily possible to dispense with compliance with certain technical requirements,
- b) that the Bundesnetzagentur can allow exceptions from the fulfilment of particular technical requirements and
- c) the telecommunications systems and telecommunications services provided by them which in derogation of subsection (1) no. 1 for fundamental technical reasons or for reasons of proportionality do not require any technical devices to be maintained and organisational arrangements to be made.

(6) The Bundesnetzagentur stipulates technical details of the implementation of measures to intercept telecommunications, in particular technical details which are necessary to ensure that the telecommunications to be intercepted are fully recorded and that the information is issued, to design the handover point to the authorised bodies and to store the data of the order and the obligations to cooperate on technical investigative measures in the case of mobile communications terminal equipment under section 171 in a Technical Guideline to be drawn up in consultation with the authorised bodies and with the participation of the associations and the manufacturers. Here, account must be taken of international technical standards; deviations from the standards must be substantiated.

(7) Anyone who manufactures or sells technical devices to implement intercepts can demand from the Bundesnetzagentur that it examine these devices in the context of a type approval examination in interaction with certain telecommunications systems as to whether the legal and technical provisions of the ordinance under subsection (5) and the Technical Guideline under subsection (6) have been complied with. The Bundesnetzagentur can use its discretion to temporarily permit deviations from the technical provisions to the extent that the implementation of intercepts is in principle ensured and that only a minor need for adjustment is required in the devices of the authorised bodies. The Bundesnetzagentur must communicate the outcome of the examination to the manufacturer or seller in writing. The Bundesnetzagentur pays attention to the outcome of the examination in the proof which the obligated party must provide under subsection (1) no. 4 of conformity of the technical devices with the technical provisions to be applied. The approvals of the framework concepts presented by the manufacturers issued by the Federal Ministry for Economic Affairs and Energy prior to the entry into force of this provision are regarded as communications within the meaning of sentence 3.

(8) Anyone who is obligated under subsection (1) or (2) in conjunction with the ordinance under subsection (5) and the Technical Guideline under subsection (6) to make arrangements must fulfil the requirements at the latest one year after they become valid for them unless the ordinance or Technical Guideline stipulates a longer period for certain obligations. In the event of an alteration to the Guideline, fault-free technical equipment for telecommunications services already offered by the obligated party designed in line with the Guideline must fulfil the altered requirements at the latest three years after their entry into force. If the proof under subsection (1) no. 4 or a renewed examination under subsection (1) no. 5 reveals a fault in the technical or organisational arrangements made by the obligated party, it must remove this fault in line with instructions from the Bundesnetzagentur within an appropriate period; if a fault is revealed in operations, particularly in the course of intercepts to be carried out, it must remove this without delay. To the extent that a type approval examination under subsection (7) has been undertaken and deadlines have been set for the removal of faults, the Bundesnetzagentur must take account of these deadlines in its instructions on the removal of faults under sentence 3.

(9) Every operator of a telecommunications system which grants network termination points of its telecommunications system to others in the context of its service to the public is obliged to provide the bodies authorised by law to intercept telecommunications on their demand with network termination points for the transmission of the information accruing in the context of an intercept without delay and as a priority. The technical design of such network termination points can be regulated in an ordinance under subsection (5). For the provision and use, the respective tariffs to be applied to the general public apply with the exception of special tariffs or surcharges for the priority or early provision or fault repair. Sentence 3 is without prejudice to special contractually agreed discounts.

(10) The technical design of telecommunications systems which are operated by the statutorily authorised bodies and are to be used to intervene in confidentiality of communications or network operations must be made in consensus with the Bundesnetzagentur. The Bundesnetzagentur must respond to the authorised body about the technical design within an appropriate deadline.

(11) Operators of public mobile communications networks which connect users of an operator of public mobile communications networks in the European Union following agreement and switch them to their telecommunications system must ensure in the intercept copy to be provided by them that an encryption provided by the foreign operator to its users on the network side is removed to the extent that international technical standards exist for this, as described in the Technical Guideline under subsection (6).

Section 171

Cooperation with technical investigative measures in the case of mobile communications terminal equipment

Every operator of a public mobile communications network must provide the authorised bodies under section 100i (1) of the Code of Criminal Procedure, section 53 of the Federal Criminal Police Office Act, section 9 (4) of the Act Regulating the Cooperation of the Federal Government and the Länder in Matters Relating to the Protection of the Constitution, also in conjunction with section 5 of the Military Counterintelligence Service Act and section 5 of the Federal Intelligence Service Act, or under Land law in line with the ordinance under section 170 (5) and the Technical Guideline under section 170 (6) without this becoming known to the end-user

1. with the possibility to use technical means of the authorised bodies in its mobile communications network which serve the ascertaining of the following information from mobile communications terminal equipment:
 - a) the location,
 - b) the equipment number,
 - c) the identifier to identify the terminal and
 - d) the temporary or permanent identifiers which are assigned to mobile communications terminal equipment in its mobile communications network,and
2. automated information about the temporary and permanent identifiers assigned in its mobile communications network without delay.

Section 170 (10) applies accordingly. This is without prejudice to obligations in line with section 170. The informing of the end-user takes place exclusively by the authority competent for the measure in line with the respective provisions in force.

Section 172

Data for requests for information from the security authorities

(1) Anyone who provides number-based interpersonal telecommunications services, internet access services or services which entirely or predominantly consist of the transmission of signals and in so doing issues telephone numbers or other access identifiers or provides contact points for telephone numbers or other access identifiers issued by others must, for the information procedure under sections 173 and 174, collect and immediately store the following data before the lines are activated, including to the extent that these data are not required for operational purposes:

1. the telephone numbers,
2. other access identifiers issued by it,
3. the name and address of the subscriber,
4. in the case of natural persons the date of birth,
5. in the case of landlines the address of the line,

6. in cases in which in addition to a mobile communications line a piece of mobile communications terminal equipment is provided, the equipment number of this device and
7. the data of the issuing of the telephone number and, where different, the date of the commencement of the contract.

The date of the ending of the assignment of the telephone number and, if different, the date of the end of the contract must also be stored when they become known. Sentences 1 and 2 also apply to the extent that the data are not entered into lists of end-users. No form of data storage is prescribed for the information procedure under section 174.

(2) Prior to activation, providers of prepaid mobile communications services must verify the correctness of the data collected under subsection (1) sentence 1 no. 3 and 4 to the extent that the data are contained in the presented documents or inspected registers or lists by means of

1. presentation of an identification document within the meaning of section 2 (1) of the Act on Identity Cards and Electronic Identification,
2. presentation of a passport within the meaning of section 1 (2) of the Passport Act,
3. presentation of another valid official identification document which contains a photograph of the holder and which meets the passport and identification obligation in Germany; this particularly includes a passport, personal identification card or replacement passport or personal identification card recognised or permitted under legislation on foreigners,
4. presentation of a residence permit,
5. presentation of proof of arrival under section 63a (1) of the Asylum Act or a certificate about the granting of residence under section 63 (1) of the Asylum Act,
6. presentation of a certificate on the suspension of deportation under section 60a (4) of the Residence Act or
7. presentation of an excerpt from the Commercial or Cooperative Register or a comparable official register or list, of the founding documents or equivalent meaningful documents or from inspection of these registers or lists and comparison with the data contained in them as long as the subscriber is a legal person or partnership.

To this end, a sales partner may send them, in derogation of section 20 (2) sentence 2 of the Act on Identity Cards and Electronic Identification and section 18 (3) sentence 2 of the Passport Act, an electronic copy of the personal identification card or passport. The verification can also take place via other appropriate procedures; the Bundesnetzagentur stipulates, following a hearing of the affected groups, which other procedures are suitable for verification, whereby in each case a document within the meaning of sentence 1 must be used for the purpose of identification prior to activation of the contractually agreed mobile communications service. Obligated parties must, prior to the use of other appropriate procedures, provide evidence of the determination of the compliance of a procedure with the stipulation of the Bundesnetzagentur by a conformity assessment body within the meaning of the definition of terms in Article 2 no. 13 of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218 of 13 August 2008, p. 30) which in accordance with that Regulation have been accredited to carry out the conformity assessment of other appropriate procedures under sentence 3. The determination of compliance must not be more than 24 months old when the procedure is used. When the verification takes place, the type of procedure used must be stored; if the verification is undertaken using a document within the meaning of sentence 1 no. 1 to 6, information must also be stored on the type, number and issuing body. Section 8 (2) sentence 4 of the Money Laundering Act applies accordingly to the identification using an electronic identity document under section 18 of the Act on Identity Cards and Electronic Identification, under section 12 of the Act on the eID Card or under section 78 (5) of the Residence Act.

(3) The obligation to store information without delay under subsection (1) sentence 1 applies accordingly with regard to the data under subsection (1) sentence 1 no. 1, 3, 4 and 7 for the party providing number-independent interpersonal telecommunications services and in so doing collective data under subsection (1) sentence 1 no. 1, 3, 4 and 7, whereby corresponding identifiers of the service replace the data under subsection (1) sentence 1 no. 1 and the user of the service replaces the subscriber under subsection (1) sentence 1 no. 3.

(4) If the obligated party under subsections (1) to (3) becomes aware of a change, it must correct the data without delay.

(5) If an obligated party under subsections (1) to (3) uses the services of a third party for the collection of the data under subsection (1) sentence 1 and 2 and subsection (3) or for the verification of the data under subsection (2), it will remain responsible for the fulfilment of the obligations under subsections (1) to (3). The third party is prohibited from using or processing incorrect data. If the third party becomes aware of changes to the data under subsection (1) sentence 1 and 2 and subsection (3) in the course of normal business activities, it must transmit these without delay to the provider of the telecommunications service.

(6) The data under subsections (1) to (3) must be deleted at the end of the calendar year following the termination of the contractual relationship.

(7) No compensation is provided for the collection and storage of the data.

Section 173

Automated information procedure

(1) Anyone providing number-based interpersonal telecommunications services or services which consist entirely or predominantly of the transmission of signals and in so going issues telephone numbers must store the data collected under section 172 (1), (2) and (4) without delay in customer files which must also include telephone numbers and quotas of telephone numbers which are issued to other providers of telecommunications services for further marketing or other use and in the case of ported numbers the current carrier portability code. The obligated party can also commission another body with maintaining the customer files in line with Article 28 of 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 of 4 May 2016, p.1; L 314 of 22 November 2016, p. 72, L 127 of 23 May 2018, p. 2). Section 172 (4) and (6) applies accordingly to the correcting and deleting of the data stored in the customer files. In the cases of ported numbers, the telephone numbers and the related carrier portability code must not be deleted until after the end of the year following the point in time at which the telephone number was returned to the network operator to whom it was originally assigned.

(2) The obligated party must ensure that

1. the Bundesnetzagentur can automatically retrieve data in Germany from the customer files,
2. the retrieval of the data can take place using incomplete search data or a fuzzy search.

The obligated party and the party commissioned by it must take technical and organisational measures to ensure that they cannot gain knowledge of the retrieved data.

(3) The Bundesnetzagentur may only retrieve data from the customer files to the extent that knowledge of the data is necessary

1. for the prosecution of administrative offences or violations of this Act or the Unfair Competition Act,
2. for the handling of requests for information from the bodies cited in subsection (4).

The requesting body examines without delay the extent to which needs the data transmitted in response; it deletes superfluous data without delay; this also applies to the Bundesnetzagentur for the retrieval of data under sentence 1 no. 1.

(4) Information from the customer files under subsection (1) is issued to the following bodies under subsection (7) at all times to the extent that the information is needed for the fulfilment of their statutory tasks and the requests to the Bundesnetzagentur are presented in the automated information procedure:

1. the courts and prosecution authorities,
2. the police forces of the Federation and the Länder for purposes of averting danger,
3. the Customs Criminological Office and the customs investigation offices for the purposes of a criminal proceeding and the Customs Criminological Office for the preparation and implementation of measures under section 72 of the Customs Investigation Service Act,
4. the authorities for the protection of the Constitution of the Federation and the Länder, the Military Counterintelligence Service, the Federal Intelligence Service,
5. the emergency call answering positions under section 164 and the answering position for number 124 124,
6. the Federal Financial Supervisory Authority,
7. the authorities of the customs administration for the purposes cited in section 2 (1) of the Act to Combat Undeclared Work via central answering positions,
8. the authorities responsible under Land law for the prosecution and punishment of administrative offences for the

purposes cited in section 2 (3) of the Act to Combat Undeclared Work via central answering positions, and

9. the cartel authorities responsible for the prosecution and punishment of administrative offences under section 81 (1) to (3) of the Act against Restraints of Competition.

(5) The Federal Ministry for Economic Affairs and Energy is authorised, in consensus with the Federal Chancellery, the Federal Ministry of the Interior, Building and Community, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance, the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry of Defence, to issue an ordinance with the approval of the Bundesrat regulating the following:

1. the essential requirements imposed on the technical procedures,
 - a) for the transmission of the requests to the Bundesnetzagentur,
 - b) for the request for the data by the Bundesnetzagentur from the obligated parties and their answer to the Bundesnetzagentur including the types of data to be used for the request and
 - c) for the transmission of the results of the request from the Bundesnetzagentur to the requesting bodies,
2. the security requirements to be observed,
3. for information and requests with incomplete request data and for the use of a fuzzy search
 - a) the minimum requirements for the scope of the data to be entered to determine as precisely as possible the person being sought,
 - b) the characters which may be used in the request,
 - c) requirements imposed on the use of linguistic procedures which ensure that different spellings of the name of a person, street or place and deviations deriving from the swapping, omission or addition of components of names are included in the search and the search results,
 - d) the permissible quantity of response data sets to be transmitted to the Bundesnetzagentur and
4. anyone who in derogation of subsection (1) sentence 1 does not need to maintain customer files for the automated information procedure on the grounds of proportionality; in these cases section 172 (1) sentence 4 applies accordingly.

Apart from this, the ordinance can also regulate restrictions of the possibility for the bodies cited in subsection (4) no. 5 to 9 to make requests, reducing this possibility to the scope needed by these bodies.

(6) The Bundesnetzagentur stipulates the technical details of the automated information procedure in a Technical Guideline with the participation of the affected associations and the entitled bodies; this Guideline must be brought into line with the best available technology as necessary. The parties obligated under subsections (1) to (2) and the entitled bodies must fulfil the requirements of the Technical Guideline at the latest one year after its entry into force, unless the Technical Guideline stipulates a different deadline for compliance. In the event of an alteration to this Guideline, fault-free technical equipment designed in line with this Technical Guideline must fulfil the altered requirements at the latest three years after their entry into force.

(7) On request from the bodies cited in subsection (4), the Bundesnetzagentur must retrieve the corresponding data sets from the customer files under subsection (1) and transmit the result to the requesting body. It only examines the admissibility of the transmission if there is a particular cause for this. The responsibility for the admissibility of the transmission is borne

1. in the cases of subsection (3) sentence 1 no. 1 by the Bundesnetzagentur and
2. in the cases of subsection (3) sentence 1 no. 2 by the bodies cited in subsection (4).

(8) The Bundesnetzagentur makes a record for the purposes of the control of data protection by the respective competent body for each retrieval of

1. the point in time,
2. the data used in the implementation of the retrieval,
3. the retrieved data,

4. a datum which clearly designates the person retrieving the data and
5. the requesting body, its file number and a datum which clearly designates the person requesting the data.

Use of the recorded data for other purposes is inadmissible. The recorded data must be deleted after one year.

(9) The obligated party under subsections (1) and (2) must make all technical arrangements in its field of responsibility at its own expense which are needed to provide the information under this provision. This includes the purchase of the equipment needed to safeguard the confidentiality and to protect against unauthorised access, the setting up of a suitable telecommunications line and the ongoing provision of these arrangements in line with the ordinance under subsection (5) and the Technical Guideline under subsection (6). Compensation for information provided in the automated information procedure is not granted to the obligated party.

Section 174

Manual information procedure

(1) Anyone providing telecommunications services or cooperating on the provision of them may use the customer data and the data collected under section 172 in line with this provision to fulfil information obligations towards the bodies cited in subsection (3). This also applies to data used to protect access to terminal equipment or storage devices used in this terminal equipment or spatially separated from it. The data to be included in a response can also be determined using an internet protocol address assigned at a certain point in time; for this purpose, traffic data may also be evaluated automatically. All in-house data sources are to be taken into account for the issuing of information under sentence 3. The obligated party must make the arrangements needed in its field of responsibility for the issuing of the information at its own expense.

(2) The information may only be issued in line with the following subsections and to the extent demanded by the body requesting the information in an individual case citing a statutory provision which permits it to collect the data referred to in subsection (1). The request for information must be made in writing or electronically. In exigent circumstances, the information may also be issued if the demand is made in a different form. In this case, the demand must be subsequently confirmed without delay in writing or electronically. The responsibility for the admissibility of the information request is borne by the body requesting the information.

(3) The information under subsection (1) sentence 1 may only be issued

1. to the authorities responsible for the prosecution of criminal offences and administrative offences to the extent that there are sufficient actual grounds to suspect a criminal offence or administrative offence and the data to be included in the information are needed to investigate the matter, to ascertain the location of an accused or affected person or to execute a punishment,
2. to the authorities responsible for the prevention of threats to public safety/security or order if the data to be included in the information are needed in the individual case
 - a) to avert a threat to public safety/security or
 - b) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, public goods, the threat to which affects the fundamental aspects of human existence, and not insubstantial material assets if facts permit a conclusion to be drawn of an event which is at least specified in its nature and foreseeable in time in which certain persons will be involved, or
 - c) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system and public goods, the threat to which affects the fundamental aspects of human existence, if the individual conduct of a person substantiates the specific probability that he or she will commit a criminal offence directed against such an asset in a foreseeable time, or
 - d) to prevent a criminal offence of substantial significance to the extent that facts justify the assumption that a person is involved within a foreseeable period in a manner which is specified in its nature as an offender or participant in the committing of a criminal offence, or
 - e) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that the individual conduct of a person substantiates the specific probability that the person will commit the

criminal offence within a foreseeable period,

3. to the Federal Criminal Police Office as the central body under section 2 of the Federal Criminal Police Office Act,
 - a) to the extent that sufficient actual grounds for suspicion of a criminal offence within the meaning of section 2 (1) of the Federal Criminal Police Office Act exist and the data to be included in the information are needed
 - aa) to ascertain the competent prosecution authority or
 - bb) in order to respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters, or
 - b) to the extent that the data to be included in the information are needed in the context of the enforcement of punishment, in order to respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters, or
 - c) to the extent that there is a threat that a person will be involved in the committing of a criminal offence within the meaning of section 2 (1) of the Federal Criminal Police Office Act and the data to be included in the information are needed
 - aa) to ascertain the police authority responsible for preventing the criminal offence or
 - bb) in order to respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence or
 - d) to the extent that facts justify the assumption that a person will be involved within a foreseeable period in a manner which is at least specified in its nature in a criminal offence of substantial significance and the data to be included in the information are needed
 - aa) to ascertain the police authority responsible for preventing the criminal offence or
 - bb) in order to respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence or
 - e) to the extent that the individual conduct of a person substantiates the specific probability that the person will commit a serious criminal offence under section 100a (2) of the Code of Criminal Procedure within a foreseeable period and the data to be included in the information are needed
 - aa) to ascertain the police authority responsible for preventing the criminal offence or
 - bb) in order to respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence,
4. to the Customs Criminological Office as the central body under section 3 of the Customs Investigation Service Act,
 - a) to the extent that sufficient actual grounds for suspicion of a criminal offence exist and the data to be included in the information are needed to
 - aa) ascertain the competent prosecution authority or
 - bb) respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters, also in the context of enforcement of a punishment, or
 - b) to the extent that this is needed in an individual case
 - aa) to avert a threat to public safety/security,
 - bb) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, public goods, the threat to which affects the fundamental aspects of human existence and not insubstantial material assets if facts permit a conclusion to be drawn of an event which is at least specified in its nature and foreseeable in time in which certain persons will be involved, or
 - cc) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of

- the Federation or a Land, the free democratic system and public goods, the threat to which affects the fundamental aspects of human existence, if the individual conduct of a person substantiates the specific probability that the threat to such an asset will occur in a foreseeable time, or
- dd) to respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent a criminal offence or
 - ee) to prevent a criminal offence of substantial significance to the extent that facts justify the assumption that a person is involved within a foreseeable period in a manner which is specified in its nature as an offender or participant in the committing of the criminal offence, or
 - ff) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that the individual conduct of a person substantiates the specific probability that the person will commit the criminal offence within a foreseeable period,
5. to the authorities for the protection of the Constitution of the Federation and the Länder to the extent that this is needed on the grounds of actual suspicions in the individual case in order to investigate certain intentions or activities under
 - a) section 3 (1) of the Act Regulating the Cooperation of the Federal Government and the Länder in Matters Relating to the Protection of the Constitution or
 - b) an observation mandate of the Land authority substantiated under Land law for the protection of the Constitution (section 1 (1) of the Act Regulating the Cooperation of the Federal Government and the Länder in Matters Relating to the Protection of the Constitution), in particular in order to protect the constitutional order against intentions and activities of organised crime,
 6. to the Military Counterintelligence Service to the extent that this is necessary on the grounds of actual suspicion in an individual case to investigate certain intentions or activities under section 1 (1) of the Military Counterintelligence Service Act or to safeguard the operational readiness of the troops or to protect the staff, entities or facilities in the portfolio of the Federal Ministry of Defence under section 14 (1) of the Military Counterintelligence Service Act,
 7. to the Federal Intelligence Service to the extent that this is necessary
 - a) for the political information of the Federal Government if in the individual case there are actual grounds for suspicion that the information can lead to information about other countries which is of significance in terms of foreign and security policy for the Federal Republic of Germany and which the Federal Chancellery has commissioned the Federal Intelligence Service with investigating, or
 - b) for the early detection of the threat from outside Germany of dangers of international significance if in the individual case there are actual grounds for suspicion that the information can lead to knowledge relating to the areas of danger cited in section 4 (3) no. 1 of the Federal Intelligence Service Act or to protect assets cited in section 4 (3) no. 2 and 3 of the Federal Intelligence Service Act,
 8. to the Federal Office for Information Security to protect the supply of the population in the areas of section 2 (10) sentence 1 no. 1 of the Act on the Federal Office for Information Security or public security in order to avert an impairment of the security or functioning of information technology systems of a critical infrastructure or an undertaking of particular public interest if facts permit the conclusion of the existence of an event that is at least specified in its nature and foreseeable in time which will be directed at the information technology systems of definable infrastructure or undertakings and the data to be included in the information are needed in the individual case in order to warn the operator of the affected critical infrastructure or the affected undertaking of particular public interest about this impairment, to inform it about it or to advise or support it regarding its removal.
- (4) The information under subsection (1) sentence 2 may only be issued under the preconditions of subsection (3) and may only be issued if the body demanding the information is also entitled to use the data to be retrieved in the individual case. The responsibility for the entitlement to use the information to be retrieved is borne by the bodies requesting the information.
- (5) The information under subsection (1) sentence 3 may only be issued
1. to the authorities responsible for the prosecution of criminal offences to the extent that there are sufficient actual grounds to suspect a criminal offence and the data to be included in the information are needed to investigate the matter, to ascertain the location of an accused person or to execute a punishment,
 2. to the authorities responsible for the prevention of threats to public safety/security or order if the data to be included

in the information are needed in the individual case

- a) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, public goods, the threat to which affects the fundamental aspects of human existence, and not insubstantial material assets or to prevent a criminal offence or
 - b) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, and public goods, the threat to which affects the fundamental aspects of human existence, if facts permit a conclusion to be drawn of an event which is at least specified in its nature and foreseeable in time in which certain persons will be involved, or
 - c) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system and public goods, the threat to which affects the fundamental aspects of human existence, if the individual conduct of a person substantiates the specific probability that he or she will commit a criminal offence directed against such an asset in a foreseeable time, or
 - d) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that facts justify the assumption that a person is involved within a foreseeable period in a manner which is specified in its nature as an offender or participant in the committing of a criminal offence, or
 - e) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that the individual conduct of a person substantiates the specific probability that the person will commit the criminal offence within a foreseeable period,
3. to the Federal Criminal Police Office as the central body under section 2 of the Federal Criminal Police Office Act, to the extent that
- a) sufficient actual grounds for suspicion of a criminal offence within the meaning of section 2 (1) of the Federal Criminal Police Office Act exist and the data to be included in the information are needed in order to
 - aa) ascertain the competent prosecution authority or
 - bb) respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters, or
 - b) the data to be included in the information are needed in the context of the enforcement of punishment, in order to respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters,
 - c) there is a threat that a person will be involved in the committing of a criminal offence within the meaning of section 2 (1) of the Federal Criminal Police Office Act and the data to be included in the information are needed in order to
 - aa) ascertain the police authority responsible for preventing the criminal offence or
 - bb) respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence or
 - d) facts justify the assumption that a person will be involved within a foreseeable period in a manner which is at least specified in its nature in a serious criminal offence under section 100a (2) of the Code of Criminal Procedure and the data to be included in the information are needed in order to
 - aa) ascertain the police authority responsible for preventing the criminal offence or
 - bb) respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence or
 - e) to the extent that the individual conduct of a person substantiates the specific probability that the person will commit a serious criminal offence under section 100a (2) of the Code of Criminal Procedure within a foreseeable period and the data to be included in the information are needed in order to
 - aa) ascertain the police authority responsible for preventing the criminal offence or

- bb) respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent the criminal offence,
- 4. the Customs Criminological Office as the central body under section 3 of the Customs Investigation Service Act, to the extent that
 - a) in the individual case sufficient actual grounds for suspicion of a criminal offence exist and the data to be included in the information are needed to
 - aa) ascertain the competent prosecution authority or
 - bb) respond to a request for information from a foreign prosecution authority in the context of official relations with international police authorities which is processed in line with the provisions on international cooperation in criminal matters, also in the context of enforcement of a punishment, or
 - b) this is needed in an individual case
 - aa) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, public goods, the threat to which affects the fundamental aspects of human existence, and not insubstantial material assets or to prevent a criminal offence or
 - bb) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system, and public goods, the threat to which affects the fundamental aspects of human existence, if facts permit a conclusion to be drawn of an event which is at least specified in its nature and foreseeable in time in which certain persons will be involved, or
 - cc) to protect life, limb, personal freedom, sexual self-determination, the existence and the security of the Federation or a Land, the free democratic system and public goods, the threat to which affects the fundamental aspects of human existence, if the individual conduct of a person substantiates the specific probability that the threat to such an asset will occur in a foreseeable time, or
 - dd) to respond to a request for information from a foreign police authority in the context of official relations with international police authorities to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure, or
 - ee) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that facts justify the assumption that a person is involved within a foreseeable period in a manner which is specified in its nature as an offender or participant in the committing of the criminal offence, or
 - ff) to prevent a serious criminal offence under section 100a (2) of the Code of Criminal Procedure to the extent that the individual conduct of a person substantiates the specific probability that the person will commit the criminal offence within a foreseeable period,
- 5. the authorities for the protection of the Constitution of the Federation and the Länder to the extent that this is needed on the grounds of actual suspicions in the individual case in order to investigate certain intentions or activities under
 - a) section 3 (1) of the Act Regulating the Cooperation of the Federal Government and the Länder in Matters Relating to the Protection of the Constitution or
 - b) an observation mandate of the Land authority substantiated under Land law for the protection of the Constitution (section 1 (1) of the Act Regulating the Cooperation of the Federal Government and the Länder in Matters Relating to the Protection of the Constitution), in particular in order to protect the constitutional order against intentions and activities of organised crime,
- 6. the Military Counterintelligence Service to the extent that this is necessary on the grounds of actual suspicion in an individual case to investigate certain intentions or activities under section 1 (1) of the Military Counterintelligence Service Act or to safeguard the operational readiness of the troops or to protect the staff, entities and facilities in the portfolio of the Federal Ministry of Defence under section 14 (1) of the Military Counterintelligence Service Act,
- 7. the Federal Intelligence Service to the extent that this is necessary
 - a) for the political information of the Federal Government if in the individual case there are actual grounds for suspicion that the information can lead to information about other countries which is of significance in terms of foreign and security policy for the Federal Republic of Germany and which the Federal Chancellery has

commissioned the Federal Intelligence Service with investigating, or

- b) for the early detection of the threat from outside Germany of dangers of international significance if in the individual case there are actual grounds for suspicion that the information can lead to knowledge relating to the areas of danger cited in section 4 (3) no. 1 of the Federal Intelligence Service Act or to protect assets cited in section 4 (3) no. 2 and 3 of the Federal Intelligence Service Act,
8. to the Federal Office for Information Security to protect the supply of the population in the areas of section 2 (10) sentence 1 no. 1 of the Act on the Federal Office for Information Security or public security in order to avert an impairment of the security or functioning of information technology systems of a critical infrastructure or an undertaking of particular public interest if facts permit the conclusion of the existence of an event that is at least specified in its nature and foreseeable in time which will be directed at the information technology systems of definable infrastructure or undertakings and the data to be included in the information are needed in the individual case in order to warn the operator of the affected critical infrastructure or the affected undertaking of particular public interest about this impairment, to inform it about it or to advise or support it regarding its removal.

(6) The party which provides telecommunications services on a commercial basis or cooperates on doing this must transmit the data to be retrieved without delay and completely. The obligated parties must preserve secrecy about the request for information and the issuing of information in relation to the affected person and third parties.

(7) Anyone who provides publicly available telecommunications services must maintain secure electronic interfaces in line with the ordinance under section 170 (5) and the Technical Guideline under section 170 (6) for the receipt of the demand for information and for issuing the related information which also ensures that the transmission is secured to prevent unauthorised parties gaining knowledge of the data. Here, obligated parties with 100,000 or more contracting partners must maintain the interface and the email-based transmission procedure under the Technical Guideline under section 170 (6). Obligated parties with fewer than 100,000 contracting partners only need to maintain the email-based transmission procedure. Further to this, section 31 (2) sentence 2 to 4 and (6) and (7), section 34 (1) sentence 1 and 3 and (2) as well as section 35 of the ordinance under section 170 (5) apply accordingly to the receipt of demands for information and to the transmission of the related information. The obligated parties must ensure that each demand for information is examined by a responsible specialist to ensure that the formal preconditions cited in subsection (2) are complied with and the further processing of the demand is only permitted following a positive finding in the examination. The examination and the giving of permission by a responsible specialist under sentence 5 can be dispensed with to the extent that the technical design of the electronic interface can automatically review the formal preconditions cited in subsection (2).

Section 175

Obligated parties; compensation

(1) The obligations to store traffic data, to use the data and regarding data security under sections 176 to 181 refer to providers of publicly available telecommunications services for end-users which are not number-independent interpersonal telecommunications services. A provider under sentence 1 which does not itself generate or process all of the data to be stored in line with sections 176 to 181 must

- 1. ensure that the data not generated or processed by it itself in the delivery of its service are stored in accordance with section 176 (1), and
- 2. inform the Bundesnetzagentur on its request without delay about who is storing these data.

(2) Appropriate compensation is to be paid for necessary expenses incurred by the obligated parties due to the implementation of the requirements deriving from sections 176, 178 to 181, to the extent that this appears appropriate in order to avert or offset unfair hardships. The assessment of the compensation must be based on the costs which have actually arisen. The Bundesnetzagentur decides on the applications for compensation.

Section 176

Obligations to store traffic data

(1) The parties cited in section 175 (1) are obliged to store data as follows in Germany:

1. data under subsections (2) and (3) for ten weeks,
2. location data under subsection (4) for four weeks.

(2) The providers of voice communications services store

1. the telephone number or another identifier of the calling and the called line and in the case of transfers or forwarding that of each additional participating line,
2. the date and time of the beginning and end of the call citing the time zone on which this is based,
3. information about the service used if difference services can be used in the context of the voice communications service,
4. in the case of mobile voice communications services additionally
 - a) the international identifier of mobile end-users for the calling and called line,
 - b) the international identifier of the calling and called terminal equipment,
 - c) the date and time of the first activation of the service citing the time zone on which this is based when services are prepaid,
5. in the case of internet voice communications services also the internet protocol addresses of the calling and the called line and assigned user IDs.

Sentence 1 applies accordingly

1. to the transmission of a short, multimedia or similar message; here the points in time of the sending and receipt of the message replace the information under sentence 1 no. 2;
2. for unanswered or, due to intervention by the network management, unsuccessful calls, to the extent that the provider of publicly available voice communications services stores or records the traffic data cited in sentence 1 for the purposes cited in section 9 of the Telecommunications Telemedia Data Protection Act.

(3) The providers of publicly available internet access services store

1. the internet protocol address assigned to an end-user for use of the internet,
2. an unambiguous identifier of the line via which the internet use takes place, and an assigned user ID,
3. the date and time of the beginning and end of the internet use under the assigned internet protocol address citing the time zone on which this is based.

(4) In the case of the use of mobile voice communications services, the designations of the base station areas are to be stored which are used by the calling and called line at the beginning of the call. With regard to publicly available internet access services, in the case of mobile use, the designation of the base station area used at the beginning of the internet connection is to be stored. In addition, the data must be kept from which the geographical location and the main beam azimuth of the radio antennae supplying the respective base station area derive.

(5) The content of the communication, data on the internet pages visited and data of electronic mail services may not be stored on the basis of this provision.

(6) Data which are based on the connections cited in section 11 (5) of the Telecommunications Telemedia Data Protection Act may not be stored on the basis of this provision. This applies accordingly to telephone calls which originate from the bodies cited in section 11 (5) of the Telecommunications Telemedia Data Protection Act. Section 11 (6) of the Telecommunications Telemedia Data Protection Act applies accordingly.

(7) The storage of the data must take place in such a way that requests for information from the entitled bodies can be answered without delay.

(8) The party obligated under section 175 (1) must irreversibly delete the data stored on the basis of subsection (1) without delay, but at the latest within a week after the expiry of the storage periods under subsection (1), or ensure that the

irreversible deletion takes place.

Section 177 **Use of the data**

(1) The data stored on the basis of section 176 may

1. be transmitted to a prosecution authority to the extent that this authority demands the transmission on the grounds of a statutory provision which permits it to collect the data cited in section 176 in order to prosecute particularly serious criminal offences;
2. be transmitted to a hazard prevention authority of the Länder to the extent that this authority demands the transmission on the grounds of a statutory provision which permits it to collect the data cited in section 176 in order to avert a specific danger to life, limb or freedom of a person or to the existence of the Federation or a Land;
3. be used by the provider of publicly available telecommunications services for information under section 174 (1) sentence 3.

(2) The data stored on the basis of section 176 may not be used by the party obligated under section 175 (1) for other purposes than those cited in subsection (1).

(3) The transmission of the data takes place in line with the ordinance under section 170 (5) and the Technical Guideline under section 170 (6). The data must be marked in such a way that it is apparent that these are data which were stored under section 176. Following transmission to another body, the marking must be maintained by that body.

Section 178 **Ensuring the security of the data**

The party obligated under section 175 (1) must ensure that the data stored on the basis of the storage obligation under section 176 (1) are protected by technical and organisational measures in line with best available technology against unauthorised access and use. The measures comprise in particular

1. the deployment of a particularly secure encryption procedure,
2. storage in discrete storage facilities which are separated from the storage facilities used for the other operational tasks,
3. storage in data processing systems which are decoupled from the internet with a high level of protection against access from the internet,
4. restriction of access to the data processing facilities to persons who are specially authorised by the obligated party, and
5. the necessary participation of at least two persons who have been specially authorised by the obligated party in the case of access to the data.

Section 179 **Record-keeping**

(1) The party obligated under section 175 (1) must ensure that a record is kept of each access, particularly reading, copying, altering, deleting and blocking of the data stored on the basis of the storage obligation under section 176 (1). The following must be recorded:

1. the point in time of the access,
2. the persons accessing the data,
3. the purpose and nature of the access.

(2) The records may not be used for purposes other than the monitoring of data protection.

(3) The party obligated under section 175 (1) must ensure that the records are deleted after one year.

Section 180 Catalogue of requirements

(1) It is necessary to ensure a particularly high standard of data security and data quality in the implementation of the obligations in accordance with sections 176 to 179. It is assumed that this standard is complied with if all requirements of the catalogue of technical arrangements and other measures are fulfilled which the Bundesnetzagentur compiles in consultation with the Federal Office for Information Security and the Federal Commissioner for Data Protection and Freedom of Information.

(2) The Bundesnetzagentur continuously reviews the requirements contained in the catalogue under subsection (1) sentence 2; in so doing, it takes account of the best available technology and the expert debate. If the Bundesnetzagentur finds that there is a need for alterations, the catalogue must be adapted without delay in consultation with the Federal Office for Information Security and the Federal Commissioner for Data Protection and Freedom of Information.

(3) Section 167 (1) sentence 3 applies accordingly. The catalogue of requirements is published by the Bundesnetzagentur. Section 165 (9) sentence 1 and 5 applies with the proviso that the requirements under subsection (1) sentence 1, section 176 (7) and (8), section 178 and section 179 (1) and (3) take the place of the requirements under section 165 (1) to (7).

Section 181 Security concept

The party obligated under section 175 (1) must additionally include in the security concept under section 166

1. which systems are operated to fulfil the obligations deriving from sections 176 to 179,
2. what threats to these systems can be assumed to exist and
3. what technical arrangements or other measures have been made or are planned to counter these threats and fulfil the obligations deriving from sections 176 to 179.

The party obligated under section 175 (1) must present the Bundesnetzagentur with the security concept without delay following the commencement of storage under section 176 and without delay in the case of each alteration of the concept. If the security concept is not altered, the party obligated under section 175 (1) must state this in writing to the Bundesnetzagentur at an interval of every two years.

Section 182 Requests for information from the Federal Intelligence Service

(1) Operators of public telecommunications networks must issue the Federal Ministry for Economic Affairs and Energy on request and free of charge with information about the structures of the telecommunications networks and forthcoming changes. Individual telecommunications processes and customer data of end-users may not be the subject of information provided under this provision.

(2) Requests under subsection (1) are admissible only if there is a corresponding request from the Federal Intelligence Service and to the extent that the information is necessary for the fulfilment of the tasks under sections 5 and 8 of the Article 10 Act or sections 6, 12 and 14 of the Federal Intelligence Service Act. No use may be made for other purposes of information obtained under this provision.

Section 183

Control and enforcement of obligations

(1) The Bundesnetzagentur can issue orders and take other measures to ensure compliance with the provisions of Division 1 and the ordinances and general administrative orders issued on the basis of this Division, and particularly the respective Technical Guidelines to be applied. The party obligated under the provisions of Division 1 must issue the Bundesnetzagentur with the necessary information for this on demand. The Bundesnetzagentur is authorised to enter and inspect the business and operational rooms during normal business or operating hours in order to review compliance with the obligations. This is without prejudice to the power of the Bundesnetzagentur under Part 11 Division 2.

(2) The Bundesnetzagentur can, if there are specific grounds for suspicion of violations of the obligations deriving from section 172 review the content of customer files under section 173 (1) sentence 1 and also process personal data for this purpose. The duration of storage of the personal data must be restricted to the necessary degree.

(3) In the case of repeated violations of section 172 (1) to (6), section 173 (1), (2), (6) sentence 2, (9) sentence 1 and 2 or section 174 (1) sentence 5 and (6), the activity of the obligated party can be restricted by order of the Bundesnetzagentur so that the customer base may only be altered by expiry or termination of contract until the obligations arising from these provisions are fulfilled.

(4) Beyond the power to issue orders under subsection (3), the Bundesnetzagentur can in the case of non-fulfilment of obligations of this Division wholly or partially prohibit the operation of the relevant telecommunications system or the provision of the relevant telecommunications service if less strict interventions to enforce lawful conduct are insufficient.

(5) In order to enforce measures under subsections (1) to (4), a coercive fine of up to one million euros can be stipulated in line with the Administrative Enforcement Act.

(6) The secrecy of telecommunications under Article 10 of the Basic Law is restricted in line with subsection (1).

Division 2

Disaster preparedness

Section 184

Scope of application

The provisions of this Division are to be applied to ensure a minimum supply of telecommunications services

1. in the case of imminent or existing substantial disruption to the supply of telecommunications services, particularly in the wake of natural disasters, particularly severe accidents, acts of sabotage, terrorist attacks or other similar events or in a state of tension or defence, and
2. to fulfil
 - a) international agreements on emergency management,
 - b) cooperation with the United Nations or

- c) Alliance obligations.

Section 185

Obligation to ensure telecommunications

(1) Providers of publicly available telecommunications services with more than 100,000 contracting partners must maintain the following services provided by them:

1. voice communications services,
2. internet access services,
3. data transmission services and
4. email services.

Operators of public telecommunications networks must maintain the operation of their network at least to the extent necessary to provide the services under sentence 1. Providers of publicly available telecommunications services under sentence 1 and operators of public telecommunications networks which provide lines or transmission paths needed for the services under sentence 1 must maintain these services.

(2) Notwithstanding the rules of Regulation (EU) 2015/2120, operators of public telecommunications networks must take traffic management measures to the extent that and for as long as it is necessary to prevent an impending system overload or to remove an existing system overload. Here, equivalent types of traffic must be treated equally.

(3) Operators of public communications networks and providers of publicly available telecommunications services under subsection (1) are required to adopt measures to the extent that and for as long as it is necessary in order to prevent an impending bottleneck in the interconnection of telecommunications networks and services, at interconnection points of telecommunications systems and services, and in system components for controlling and managing telecommunications services, or in order to remove a bottleneck where it has occurred.

Section 186

Priority access to telecommunications

(1) Operators of public telecommunications networks and providers of publicly available telecommunications services under section 185 (1) sentence 1 which provide lines or transmission paths needed for the services to be ensured under section 185 (1) must, without delay and as a priority,

1. provide lines and transmission paths and repair faults in them and
 2. expand the data transmission rates of existing lines or transmission paths on request to the necessary extent,
- for parties entitled to priority access to telecommunications.

(2) Operators of public mobile communications networks must set up connections in mobile communications for interpersonal communications as a priority for those entitled to priority access to telecommunications. The Bundesnetzagentur can make technical stipulations and set deadlines for the details of this obligation. In making the stipulations, the Bundesnetzagentur takes account of international technical standards and involves the affected associations.

(3) Parties entitled to priority access to telecommunications are

1. constitutional bodies of the Federation and the Länder,
2. authorities of the Federation, the Länder, the municipalities and the associations of municipalities,
3. courts of the Federation and the Länder,
4. entities of the Federal Armed Forces and the stationed forces,
5. organisations of disaster management and civil protection and aid organisations under section 26 (1) sentence 2 of

- the Civil Protection and Disaster Relief Act,
6. responsible bodies in the healthcare system,
 7. aid and rescue services,
 8. broadcasters,
 9. users which have been issued a certificate by an authority under no. 2 which is responsible for protecting the population (civil protection or disaster management) or defence stating that it has to fulfil tasks vital for life or defence and is reliant for this on telecommunications services under subsection (1) or (2).

The certificate under sentence 1 no. 9 loses its validity ten years after its issue to the extent that no shorter period of validity is noted on the certificate.

Section 187 **Implementation of priority access to telecommunications**

(1) Parties entitled to priority access to telecommunications must inform their provider in good time in advance

1. about the lines and transmission paths where faults must be repaired as a priority,
2. about which mobile communications lines are to be used for priority connections.

In this process, parties entitled to priority access to telecommunications services under section 186 (3) sentence 1 no. 9 must present the certificate issued to them.

(2) The party obligated under section 186 (1) and (2) must make arrangements for the implementation of the priority access to telecommunications services without delay following receipt of the communication under subsection (1) sentence 1. It must remove these arrangements following termination of the line or following the expiry of the deadline cited in section 186 (3) sentence 2 unless a new certificate under section 186 (3) sentence 1 no. 9 is presented prior to the expiry of this deadline. The parties obligated under section 186 (1) and (2) must inform the affected user without delay about the conclusion and removal of the arrangements made.

(3) The duration or the data transmission rate of non-priority calls can be restricted to the necessary extent in order to fulfil the obligation under section 186 (2) sentence 1. Sentence 1 does not apply to connections to the emergency numbers 110 and 112; this is without prejudice to section 4 of the Ordinance on Emergency Calls of 6 March 2009 (Federal Law Gazette I p. 481), as last amended by Article 1 of the Act of 26 November 2012 (Federal Law Gazette I p. 2347).

Section 188 **Obligations to cooperate and compensation**

(1) The parties obligated under this Division must cooperate with and second the necessary expert staff for working groups in Germany in response to an order by the Federal Ministry for Economic Affairs and Energy in the cases of section 184 and in the context of contingency planning and exercises.

(2) Compensation is granted from the beginning of the deployment per person and per commenced hour for staff which have been seconded on the basis of an order under subsection (1). This compensation corresponds to no. 11.3 of Annex 1 to the Judicial Remuneration and Compensation Act of 5 May 2004 (Federal Law Gazette I p. 718, 776), as last amended by Article 6 of the Act of 21 December 2020 (Federal Law Gazette I p. 3229), in the version in force at the time. The compensation must not exceed the amount to be paid for an eight-hour deployment per person and day.

Section 189 **Fees for priority access to telecommunications**

Parties entitled to priority access to telecommunications must pay the following fees to their provider:

1. a one-off fee of 100 euros for each line and transmission path for which arrangements have been made under section 187 (1) sentence 1 no. 1, and
2. a one-off fee of 50 euros for each line for which technical arrangements have been made under section 187 (1) sentence 1 no. 2.

This covers all the entitlements to fees. If an obligated party has fulfilled its obligation to remove the arrangements made and it is subsequently presented with a new certificate under section 186 (3) sentence 1 no. 9, sentence 1 applies accordingly. This is without prejudice to the other fees for the use of telecommunications services.

Section 190

Control and enforcement of obligations

(1) The Bundesnetzagentur can issue orders and take other measures to ensure compliance with the provisions of this Division. The obligated party must issue the information necessary for this on demand by the Bundesnetzagentur. Section 55 of the Code of Criminal Procedure applies accordingly. The Bundesnetzagentur is authorised to enter and inspect the business and operational rooms during normal business or operating hours in order to review compliance with the obligations. The obligated party must tolerate the review. This is without prejudice to the powers of the Bundesnetzagentur under Part 11 Division 2.

(2) In order to enforce measures under subsection (1), a coercive fine of up to one million euros can be stipulated in line with the Administrative Enforcement Act.

Part 11

Bundesnetzagentur and other competent authorities

Division 1

Organisation

Section 191

Tasks and powers

The Bundesnetzagentur assumes the tasks and powers assigned to it under this Act and under Article 5 of Regulation (EU) 2015/2120 and under Article 7 (1) and Article 8 of Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60 of 2 March 2018, p. 1).

Section 192

Publication media

Publications and announcements which the Bundesnetzagentur is obliged to make due to this Act are made in the Official Journal of the Bundesnetzagentur and on its website unless other stipulations are made.

Section 193 Publication of instructions

Instructions issued by the Federal Ministry for Economic Affairs and Energy or the Federal Ministry of Transport and Digital Infrastructure must be published in the Federal Gazette. This does not apply to tasks which are to be undertaken by these federal ministries on the basis of this Act or other acts as part of their own portfolio and which they have commissioned the Bundesnetzagentur to fulfil.

Section 194 Tasks and rights of the Advisory Council

- (1) The Advisory Council under section 5 of the Act on the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway has the tasks and rights cited in the following subsections.
- (2) The Advisory Council cooperates on the decisions of the Bundesnetzagentur in the cases of section 100 (4) no. 2 and 4.
- (3) The Advisory Council is entitled to apply for measures to implement the regulatory aims and to ensure the right to the supply of telecommunications services in accordance with Part 9. The Bundesnetzagentur is obliged to decide on the application within six weeks.
- (4) The Advisory Council is entitled to obtain information and comments from the Bundesnetzagentur. The Bundesnetzagentur is obliged to provide information to the Advisory Council.
- (5) The Advisory Council must be heard when the spectrum plan under section 90 is set up.

Section 195 Activity report, sectoral study

- (1) The Bundesnetzagentur presents a report on its activity and on the situation and development in the field of telecommunications to the legislative bodies of the Federation. The report must be presented together with the sectoral study under subsection (2). The report must also comment on the development and the level of retail prices for telecommunications services under section 157 (2) and the availability of the minimum offer of these services.
- (2) The Monopoly Commission produces a sectoral study every two years in which it assesses the situation and the foreseeable development of competition and the question as to whether sustainably competitive telecommunications markets exist in the Federal Republic of Germany, gives an appreciation of the application of the provisions of this Act on regulation and on supervision of competition, and comments on other topical competition policy issues.
- (3) The sectoral study is to be completed by 30 November of a year in which no main study under section 44 of the Act against Restraints of Competition is presented. The Monopoly Commission can inspect the files held by the Bundesnetzagentur including the operational and commercial secrets to the extent that this is needed for the orderly fulfilment of its tasks. Section 46 (3) of the Act against Restraints of Competition applies accordingly to the confidential handling of the files. The Federal Government makes comments on the sectoral study to the legislative bodies of the Federation within an appropriate period.

Section 196

Annual report

The Bundesnetzagentur publishes once a year a report on the development of the telecommunications market, including the main market data, its decisions and the human and financial resources it has deployed. The Bundesnetzagentur also reports about its future projects in the annual report.

Section 197

Cooperation with other authorities at national level

(1) The Bundesnetzagentur decides in consensus with the Bundeskartellamt in the following cases:

1. sections 10 and 11,
2. section 31,
3. section 32 and
4. section 101 (2) no. 3.

(2) The Bundesnetzagentur gives the Bundeskartellamt opportunity to comment in good time before the conclusion of the procedure in the context of the following decisions:

1. section 17 in conjunction with section 18 (1) no. 2 and (3),
2. Part 2 Division 2 to 5 and
3. section 149 (6).

(3) The Bundesnetzagentur gives the Bundeskartellamt opportunity to comment in good time before the conclusion of the procedure in the context of a measure or decision under section 91 (9) in conjunction with

1. section 92 (2) sentence 3 no. 4,
2. section 100 (3) sentence 3,
3. section 102 (1) no. 5 and 6,
4. section 105 or
5. section 106.

(4) If the Bundeskartellamt conducts procedures in the field of telecommunications under sections 19 and 20 (1) and (2) of the Act against Restraints of Competition, under Article 102 of the Treaty on the Functioning of the European Union or under section 40 (2) of the Act against Restraints of Competition, it gives the Bundesnetzagentur opportunity to comment in good time before the conclusion of the procedure.

(5) Both authorities work towards a uniform interpretation of this Act which preserves the context of the Act against Restraints of Competition, also in the issuing of administrative provisions. They inform each other of observations and stipulations which can be of significance to the fulfilment of their mutual tasks.

(6) The Bundesnetzagentur works together with the Land media institutes. On request it transmits findings to the Land media institutes which are necessary for the fulfilment of their tasks. In the case that interests of broadcasting and comparable telemedia under section 2 (7) sentence 1 are affected, the competent Land media institute is informed of this and involved in procedures that have been launched. On application from the competent Land media institute, the Bundesnetzagentur examines on the basis of this Act the launching of a procedure and the ordering of measures under this Act.

(7) When assuming its tasks and powers under Article 5 of Regulation (EU) 2015/2120, the Bundesnetzagentur works together with the body competent under the respective Land legislation to the extent that interests of broadcasting and

comparable telemedia under section 2 (7) sentence 1 are affected.

Section 198

Cooperation with other authorities at the level of the European Union

- (1) The Bundesnetzagentur cooperates with the national regulatory authorities of other Member States of the European Union, the Commission and BEREC in a transparent manner in order to ensure a uniform application of the provisions of Directive (EU) 2018/1972. In particular, it cooperates with the Commission and BEREC when ascertaining the measures which are best suited to coping with certain situations on the market.
- (2) The Bundesnetzagentur supports the aims of BEREC with regard to better regulatory coordination and greater coherence.
- (3) The Bundesnetzagentur cooperates and works in consensus with the Federal Ministry of Transport and Digital Infrastructure in the Radio Spectrum Policy Group.
- (4) The Bundesnetzagentur takes utmost account in the assumption of its tasks of the recommendations issued by the Commission under Article 38 (1) and (2) of Directive (EU) 2018/1972. If the Bundesnetzagentur decides not to follow such a recommendation, it informs the Commission of this, citing its reasons.

Section 199

Provision of information

- (1) The Bundesnetzagentur and other competent authorities under this Act provide the Commission in response to its substantiated application with the information which the Commission needs to assume its tasks on the basis of the Treaty on the Functioning of the European Union. If the information provided refers to information previously provided by undertakings in response to a demand from the authority, the undertakings are informed of this.
- (2) The Bundesnetzagentur and other competent authorities under this Act can provide information transmitted to them to BEREC and authorities of another Member State of the European Union in response to their substantiated application to the extent that this is needed for BEREC to be able to fulfil its or for these authorities to be able to fulfil their obligations deriving from the law of the European Union.
- (3) In the context of the exchange of information under subsections (1) and (2), the Bundesnetzagentur and other competent authorities under this Act ensure confidential treatment of all transmitted information which is regarded as confidential under the provisions of the European Union and the Member States of the European Union about commercial secrets.
- (4) The Bundesnetzagentur and other competent authorities under this Act mark confidential information when providing information to the Commission, to authorities of other Member States of the European Union and to BEREC. They can apply to the Commission for the information provided by them to the Commission not to be made available to authorities of other Member States of the European Union. The application must be substantiated.

Section 200

Mediation

The Bundesnetzagentur can in suitable cases propose to the parties an amicable attempt at agreement by a conciliation body via a mediation procedure in order to settle disputes under telecommunications law.

Section 201

Scientific advice

(1) The Bundesnetzagentur can deploy scientific commissions to prepare its decisions or to study questions of regulation. The members of these commissions must dispose of special economic, commercial, social-policy, technological or legal expertise and proven scientific knowledge in the field of telecommunications.

(2) The Bundesnetzagentur receives ongoing scientific support in the fulfilment of its tasks. This applies in particular to

1. the regular study of the economic, commercial, legal and social development of telecommunications in Germany and abroad,
2. the preparation and further development of the scientific basis for the shaping of law regarding the supply of telecommunications services, the regulation of providers with substantial market power, the rules on open network access and interconnection as well as numbering and the protection of customers.

Division 2 Powers

Section 202 Enforcement of obligations

(1) If the Bundesnetzagentur finds that an undertaking is not fulfilling its obligations under this Act, on the basis of this Act, under Regulation (EU) No 531/2012 or under Regulation (EU) No 2015/2120, it will call on the undertaking

1. to comment on the non-fulfilment of the obligation within an appropriate period and
2. to remedy the non-fulfilment of the obligation within an appropriate period or without delay.

The demand for remedies under sentence 1 no. 2 can only be challenged at the same time as the order under subsection (2).

(2) The Bundesnetzagentur can order the necessary measures in order to ensure compliance with the obligations if the undertaking does not comply with the demand for remedies under subsection (1) sentence 1 no. 2 within the prescribed period. In this order, the undertaking is to be given an appropriate period in which to comply with the measures.

(3) If the undertaking violates its obligations in a serious or repeated manner or if it fails to comply with the measures ordered by the Bundesnetzagentur under subsection (2), the Bundesnetzagentur can prohibit it from acting as an operator of telecommunications networks or provider of telecommunications services.

(4) If the violation of obligations directly and seriously threatens public safety/security and order or the violation of duties results in substantial economic or operational problems for other providers or users of telecommunications networks or services, the Bundesnetzagentur can take provisional measures. The Bundesnetzagentur decides, after having given the relevant undertakings an opportunity to comment within an appropriate period, whether the provisional measure is confirmed, revoked or altered.

(5) In order to enforce the orders under subsection (2), a coercive fine of at least 1,000 euros to up to a maximum of 10 million euros can be stipulated in line with the Administrative Enforcement Act.

(6) Subsections (1), (2), (4) and (5) apply accordingly to the enforcement of obligations of owners and operators of public supply networks which are not undertakings.

(7) Subsections (1), (2) and (5) apply accordingly if the Bundesnetzagentur finds that a provider is not fulfilling its obligations under Regulation (EU) 2018/302.

Section 203

Demands for information and further investigatory rights; duties to transmit information

(1) Notwithstanding other national reporting and information requirements or such requirements based on immediately enforceable law of the European Union, the operators of public telecommunications networks and the providers of publicly available telecommunications services and the owners and operators of public supply networks are obliged to provide the Bundesnetzagentur on demand with the information that is needed for the execution of this Act and the other tasks and powers assigned to it under section 191. In particular, the Bundesnetzagentur can demand information which is necessary for

1. the systematic or case-related review of the obligations which derive from this Act or on the basis of this Act,
2. the case-related review of obligations if a complaint has been made to the Bundesnetzagentur or it assumes for other reasons that duties are being violated or it carries out investigations on its own account,
3. the publication of quality and price comparisons for services to the benefit of the end-users, including information on the actual, site-related network coverage under section 52 (7) sentence 2,
4. statistical purposes which are precisely described by it,
5. the market definition and market analysis procedure under sections 10 and 11 and the regulatory order under section 13,
6. the market examination procedure for commitments under section 19 and for the imposition of access obligations in the case of barriers to replicability under section 22.
7. the implementation of the procedures in Part 9,
8. procedures to issue rights of use and to review the corresponding applications or
9. the systematic or case-related review of compliance with statutory provisions on the assignment and use of numbers and the stipulations made and conditions imposed by the Bundesnetzagentur on the assignment and use of numbers.

Information under sentence 2 no. 1 to 5 may not be demanded prior to access to the market or as a condition for such access. Sentence 1 applies accordingly to providers within the meaning of Article 2 no. 18 of Regulation (EU) 2018/302. If the information transmitted by the undertakings cited in sentence 1 is not sufficient for the Bundesnetzagentur to assume its regulatory tasks, other undertakings which are active in telecommunications or closely related sectors can be obliged to issue information about the purposes cited in sentences 1 and 2.

(2) To the extent that this is necessary to fulfil the tasks and powers under section 191 assigned to it under this Act or elsewhere, the Bundesnetzagentur can, with regard to the undertakings cited in subsection (1)

1. demand information about their economic situation, and particularly their turnover figures, and
2. inspect and examine the business documents within the normal operating or business hours.

The Bundesnetzagentur can demand in particular information about future network and service developments from the undertakings cited in subsection (1) if these developments can impact wholesale services which the undertakings make available to competitors. The Bundesnetzagentur can also demand accounting data on the retail markets associated with wholesale markets from undertakings with significant market power on these wholesale markets.

(3) To the extent that it is necessary for the fulfilment of tasks transferred to the Bundesnetzagentur in this Act, the Bundesnetzagentur can in case of dispute

1. undertake on-site investigations of passive network infrastructure of public supply networks,
2. demand information about future developments of the networks and services from the owners and operators of public supply networks to the extent that these developments can impact the shared use of the passive network infrastructure of the owners and operators of public supply networks, and
3. in the cases of section 79 (3), section 136 (4), section 137 (3), section 141 (2), section 142 (4), section 143 (4), section 153 (4) and section 154 (4) inspect the security concepts, documents of evidence, or parts of them, produced by the operators of public supply networks.

(4) The single information point of the Federation can demand from owners or operators of public telecommunications networks or telecommunications lines that the information be made available which is needed for it to fulfil its tasks under

1. section 78 (1) no. 2 in conjunction with section 80 and

2. section 78 (1) no. 3 in conjunction with section 81.

If the information collected in accordance with sentence 1 does not suffice for the purposes of sections 80 and 81, the single information point of the Federation can request other undertakings which are active in telecommunications or closely related sectors to provide information which is needed to fulfil the tasks under section 78 (1) no. 2 in conjunction with section 80 and under section 78 (1) no. 3 in conjunction with section 81.

(5) The Bundesnetzagentur provides the Federal Ministry for Economic Affairs and Energy and the Federal Ministry of Transport and Digital Infrastructure with data on the actual, site-related expansion of the mobile communications networks under subsection (1) sentence 2 no. 3 in conjunction with section 52 (7) sentence 2, in particular data on localities where disconnections of voice telephony are prevalent, including undertaking-related data and the operational and commercial secrets in a format which can be further processed to the extent that this is needed for the fulfilment of their respective statutory tasks. The statutory tasks also include the production of network coverage maps which preserve operational and commercial secrets.

(6) The Bundesnetzagentur orders the measures under subsections (1) to (3) by an administrative order. The single information point of the Federation demands the information under subsection (4) by an administrative order. The administrative order must cite the legal basis, the subject and the purpose of the demand for information. Here, a demand for information can cover several purposes. An appropriate deadline must be set for the issuing of the information. The transmission of the information demanded takes place electronically and in a format that can be further processed to the extent that the Bundesnetzagentur or the single information point of the Federation has not ordered otherwise. The Bundesnetzagentur and the single information point of the Federation can impose suitable requirements on the design and the intervals of the transmission.

Section 204 **Issuing of information**

(1) The owners of the undertakings or the persons representing them are obliged

1. to issue the information demanded under section 203 (1) to (4),
2. to present the business documents and
3. to tolerate the examination of these business documents and the entry of business premises and real estate during normal operating or business hours.

In the case of legal persons, companies or associations without legal capacity, the obligations under sentence 1 apply to the persons appointed to represent them by law or by articles of association.

(2) Persons who are commissioned by the Bundesnetzagentur with the carrying out of examinations may access the office and business premises of the undertakings and associations of undertakings during the usual operating or business hours.

(3) Searches can only be undertaken on the basis of an order by the local court in whose district the search is to take place. Sections 306 to 310 and 311a of the Code of Criminal Procedure apply accordingly to challenges to this order. In exigent circumstances, the persons designated in subsection (2) can undertake the necessary searches during business hours without a judicial order. A record of the search and its main findings is to be produced on the spot which, if no judicial order has been made, also explains the facts that led to the assumption of the existence of exigent circumstances.

(4) Objects or business documents can be impounded to the necessary extent or, if they are not provided voluntarily, can be seized. Subsection (3) applies accordingly to the seizure.

(5) Parties obliged to furnish information under subsection (1) can refuse to provide information on questions the answer to which would make themselves or a relative, as specified in section 383 (1) nos. 1 to 3 of the Code of Civil Procedure, liable to criminal prosecution or to proceedings under the Administrative Offences Act. The knowledge and documents obtained from the information or measures under section 203 (1) to (4) may not be used for a taxation procedure or a fines procedure due to an offence against tax laws or a currency violation and for proceedings due to a fiscal offence or a currency offence; sections 93, 97, 105 (1), section 111 (5) in conjunction with section 105 (1) and section 116 (1) of the Fiscal Code are not to be applied to this extent. Sentence 2 does not apply to proceedings relating to a fiscal offence and a related taxation procedure if there is a compelling public interest in their implementation, or in the case of deliberately false information from the party obliged to provide information of the persons acting for it.

(6) To the extent that examinations reveal a violation of conditions, orders or administrative orders of the Bundesnetzagentur, the undertaking must reimburse the Bundesnetzagentur with the expenses for these examinations including its spending on experts.

(7) In order to enforce the measures under section 203, a coercive fine of at least 1,000 euros to up to a maximum of 10 million euros can be stipulated in line with the Administrative Enforcement Act.

Section 205 Investigations

(1) The Bundesnetzagentur can conduct all investigations and collect all necessary evidence.

(2) Section 372 (1), sections 376, 377, 380 to 387, 390, 395 to 397, 398 (1) and sections 401, 402, 404, 406 to 409, 411 to 414 of the Code of Civil Procedure must be applied accordingly to evidence by inspection, from witnesses and from experts; custody may not be imposed. The higher regional court is competent for the decision on the complaint.

(3) A record is to be made of the statements of the witnesses. The record must be signed by the investigating member of the Bundesnetzagentur and, if a registrar is additionally present, also by the latter. The record is to contain the place and date of the hearing and the names of those cooperating and participating.

(4) The record must be read to the witnesses or presented to them to read themselves for approval. A note must be made of the approval issued and signed by the affected persons. If no signature is provided, the reason for this must be stated.

(5) Subsections (3) and (4) are to be applied accordingly to the questioning of experts.

(6) The Bundesnetzagentur can request the local court to take witnesses under oath if it regards the taking of the oath necessary in order to bring about a truthful statement. The court decides on whether the oath is to be taken.

Section 206 Seizure

(1) The Bundesnetzagentur can seize objects which can be of importance as evidence for the investigation. The seizure must be announced without delay to the parties affected by it.

(2) The Bundesnetzagentur must apply within three days for the judicial confirmation from the local court in whose district the seizure has taken place if neither the affected party nor an adult relative was present at the seizure or if the affected party and in the case of his or her absence an adult relative of the affected party has explicitly objected to the seizure.

(3) The affected party can apply for a decision by the court at any time. He or she must be informed of this right. The application is decided on by the court which is competent under subsection (2).

(4) An appeal can be lodged against the court's decision. Sections 306 to 310 and 311a of the Code of Criminal Procedure apply accordingly.

Section 207 Provisional orders

The Bundesnetzagentur can make provisional orders under the final decision is taken.

Section 208
Surrender of economic gain via the Bundesnetzagentur

(1) If an undertaking has violated a decision of the Bundesnetzagentur or deliberately or negligently violated a provision of this Act and thus gained an economic advantage, the Bundesnetzagentur can order the surrender of the economic advantage and order the undertaking to pay a corresponding amount of money.

(2) Subsection (1) does not apply to the extent that the economic advantage is offset via payments of damages or the imposition of fines or the order to seize proceeds from the offence. To the extent that the undertaking only makes payments under sentence 1 following the skimming off of the economic advantage, the monetary amount surrendered is reimbursed to the undertaking to the amount of documented payments made.

(3) If skimming off an economic advantage would represent an unfair hardship, the order should be limited to an appropriate amount of money or should not be imposed. It should also not be imposed if the economic advantage is small.

(4) The level of the economic advantage can be estimated. The amount of money to be skimmed off must be determined in figures.

Division 3
Procedures

Subdivision 1
Administrative procedures of the Bundesnetzagentur

Section 209
Decisions by the Bundesnetzagentur

(1) Decisions by the Bundesnetzagentur must be substantiated. They must be announced to the parties with the substantiation and information about admissible legal remedies.

(2) Decisions which are made with reference to a party abroad are announced by the Bundesnetzagentur to the person whom the party has nominated to the Bundesnetzagentur as authorised representative in Germany or in another Member State of the European Union. If the party has no authorised representative in Germany or in another Member State of the European Union, the Bundesnetzagentur announces the decision by an announcement in the Federal Gazette or serves the decision abroad under section 9 of the Act on Service in Administrative Procedure.

(3) Apart from this, this is without prejudice to section 41 of the Administrative Procedure Act.

(4) To the extent that a procedure is not concluded by a decision, the termination of the procedure must be communicated to the parties.

Section 210
Announcement of general administrative orders

Decisions by the Bundesnetzagentur in the form of Technical Guidelines and other general administrative orders are to be publicly announced in derogation of section 209 (1). The public announcement is effected by

1. the publication of the complete decision on the website of the Bundesnetzagentur and
2. the following being announced in the Official Journal of the Bundesnetzagentur:
 - a) the operative part of the general administrative order,
 - b) the information on legal remedies and
 - c) a reference to the publication of the complete decision on the website of the Bundesnetzagentur.

The general administrative order is deemed to have been announced two weeks after the announcement in the Official Journal of the Bundesnetzagentur; reference to this is to be made in the announcement. Section 41 (4) sentence 4 of the Administrative Procedure Act applies accordingly.

Subdivision 2 Ruling chambers

Section 211 Decisions by ruling chambers

(1) The Bundesnetzagentur decides via ruling chambers in the cases of Part 2, of section 91 (9) and sections 100 and 101. This is without prejudice to subsection (4) sentence 1. The decision is made in the form of an administrative decision. The ruling chambers are formed, with the exception of subsections (2) and (4), following a determination by the Federal Ministry for Economic Affairs and Energy in consultation with the Federal Ministry of Transport and Digital Infrastructure.

(2) The Bundesnetzagentur decides via ruling chambers as the national dispute settlement body in the cases of section 72, section 128 (4), section 134 (5) and section 149. The decision is made in the form of an administrative decision. National dispute settlement bodies are formed following a determination by the Federal Ministry of Transport and Digital Infrastructure in consultation with the Federal Ministry for Economic Affairs and Energy.

(3) The ruling chambers decide in the formation of one presiding member and two associate members. The presiding and the associate members must have obtained the qualification for a career in the higher civil service. At least one member of the ruling chamber must have a qualification for the office of judge.

(4) In the cases of section 91 (9) and sections 100 and 101, section 3 (1) sentence 1 and (2) of the Act on the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway applies accordingly to the composition of the ruling chamber; subsection (3) sentence 2 and 3 does not apply to this extent. The decision in the cases of section 100 (4) no. 2 and 4 is made in consultation with the Advisory Council.

(5) In order to uphold a uniform ruling practice in cases of similar or connected subject matter and to ensure the requirement for consistency under section 38 (5) sentence 2 no. 1, procedures are to be provided for in the rules of procedure of the Bundesnetzagentur which provide for comprehensive coordination and information obligations for the respective ruling chambers and the departments. To the extent that decisions by the ruling chambers under sections 24 to 32 (2), under section 38 or section 49 are affected, the rules of procedure must ensure that stipulations under sections 10 and 11 are made by the President's Chamber.

(6) In derogation of section 209 (1), decisions by the ruling chambers must be served to the parties under the provisions of the Act on Service in Administrative Procedure. Decisions by ruling chambers which are issued in respect of a party abroad are served by the Bundesnetzagentur to the person whom the party has nominated to the Bundesnetzagentur as its representative authorised to take delivery of documents in Germany. If the party has not nominated a person authorised to take delivery of documents in Germany, the ruling chamber announces the decision by an announcement in the Federal Gazette or serves the decision abroad under section 9 of the Act on Service in Administrative Procedure.

(7) To the extent that a procedure is not concluded by a decision which is served to the parties under subsection (6), the termination of the procedure must be communicated to the parties.

Section 212

Other disputes between undertakings

(1) If in the context of obligations deriving from this Act or on the basis of this Act disputes arise between undertakings which operate public telecommunications networks or provide publicly available telecommunications services, or between these and other undertakings benefiting from access or interconnection obligations deriving from this Act or on the basis of this Act, the ruling chamber makes, to the extent that this is not regulated otherwise by law, a binding decision on application from a party following a hearing of the parties. It must decide on the dispute within a period of at most four months, starting with the appeal by one of the parties to the dispute.

(2) If a dispute between undertakings in different Member States of the European Union in an area covered by this Act falls under the competence of the national regulatory authorities of more than one Member State of the European Union, each party can present the dispute to the respective national regulatory authority. If the dispute comes under the area of competence of the Bundesnetzagentur, it coordinates its measures with the competent national regulatory authorities of the other affected Member States of the European Union. The ruling chamber takes its decision in consultation with the respect national regulatory authority within the deadline cited in subsection (1).

(3) In a dispute under subsection (2) which impairs trade between the Member States of the European Union, the Bundesnetzagentur reports the dispute to BEREC in order to permanently settle it in harmony with the aims cited in section 2. The ruling chamber does not take its decision before BEREC has submitted its comments following a report under sentence 1 in which it requests the Bundesnetzagentur or the competent national regulatory authority to take or refrain from specific measures so that the dispute is settled at the latest within four months. This is without prejudice to section 207.

(4) Sections 202 to 207, 211 and 213 to 217 apply accordingly.

Section 213

Initiation, parties

(1) The ruling chamber initiates a procedure ex officio or on application.

(2) The following participate in the procedure before the ruling chamber:

1. the applicant,
2. the operators of public telecommunications networks and the providers of publicly available telecommunications services against whom the procedure is directed,
3. the persons and associations of persons whose interests are affected by the decision and whom the Bundesnetzagentur has summoned to the procedure in response to their application.

Section 214

National dispute settlement procedures

(1) The national dispute settlement body initiates a procedure on application.

(2) The following participate in the procedure before the national dispute settlement body:

1. in the case of a procedure under section 128 (4), section 134 (5), section 149 (1) no. 1, 2, 3 and 5 the applicant and the owner or operator of public supply networks or other physical infrastructure against whom the procedure is

directed,

2. in the case of a procedure under section 149 (1) no. 4 the applicant and the party entitled to dispose of the network infrastructure in buildings or to the first concentration or distribution point of a public telecommunications network against whom the procedure is directed,
3. in the case of a procedure under section 149 (1) no. 6 the applicant and the operator of a network infrastructure constructed under section 72 (1) no. 1 and 2 against whom the procedure is directed,
4. the persons and associations of persons whose interests are affected by the decision and whom the Bundesnetzagentur has summoned to the procedure as applied for by them.
5. in the case of a claim against railway infrastructure undertakings the competent railway supervisory authority.

(3) If in the case of disputes about the existence of grounds for rejection under section 136 (4) no. 3, section 137 (3) no. 3, section 141 (2) no. 4, section 142 (4) no. 4, section 143 (4) no. 1, section 153 (4) no. 3 or section 154 (4) sentence 2 no. 4 critical infrastructure within the meaning of section 2 (10) of the Act on the Federal Office for Information Security is affected, the Bundesnetzagentur decides in consultation with the Federal Office for Information Security.

Section 215 **Hearing, oral proceedings**

(1) The ruling chamber must give the parties opportunity to comment.

(2) The ruling chamber can give the persons which represent business groups affected by the procedure opportunity to comment in appropriate cases.

(3) The ruling chamber takes its decision on the basis of public oral hearings. With the consent of the parties, the oral hearing can be held in the context of a conference call or a video conference or decided without an oral hearing. Further to this, the ruling chamber can take a decision without an oral hearing if following an announcement by the ruling chamber none of the parties makes a substantiated demand for the holding of the oral hearing. On application from a party or ex officio, the public is to be excluded from the hearing or from part of it if there are fears of a threat to public order, and particularly the security of the state, or a threat to an important operational or commercial secret.

(4) In derogation of subsection (3), the ruling chamber can decide without an oral hearing if the matter does not manifest any special actual or legal difficulty and the facts are clear. The parties must be heard before this.

(5) The ruling chamber can reject declarations and evidence which are only produced following the expiry of a set deadline and decide without further investigation if

1. admitting them would delay the handling of the procedure at the free discretion of the ruling chamber,
2. the party has not adequately excused the delay and
3. the party has been informed about the consequences of a failure to meet the deadline.

The excuse given for the delay must be made credible if the ruling chamber so demands.

Section 216 **Operational or commercial secrets**

Without delay after the presentation of documents in the context of the ruling chamber procedure, all parties must mark those parts which contain operational or commercial secrets. In this case, they must additionally present a version which, in their view, can be inspected without the disclosure of operational or commercial secrets. If this version is not presented, the ruling chamber can assume that they have consented to the documents' being inspected unless it is aware of special circumstances which do not justify such an assumption. If the ruling chamber regards the marking of the documents as operational or commercial secrets as being unjustified, it must hear the persons presenting the documents before deciding

whether to grant access to third parties.

Subdivision 3 Judicial procedures

Section 217 Legal remedies

(1) Objections and lawsuits against decisions of the Bundesnetzagentur do not have a suspensive effect.

(2) In the case of section 211 and in the case of decisions of the Bundesnetzagentur under Part 9, no preliminary proceedings take place.

(3) In the case of section 211 and in the case of decisions of the Bundesnetzagentur under Part 9, the appeal against a ruling and the complaint under the Code of Administrative Court Procedure or under the Courts Constitution Act against another decision by the administrative court are not permitted. This does not apply to

1. the complaint against the decision under section 218 (2) sentence 1,
2. the complaint against the non-admission of the appeal on points of law under section 135 in conjunction with section 133 of the Code of Administrative Court Procedure and
3. the complaint against decisions via the recourse to the courts under section 17a (2) and (3) of the Courts Constitution Act.

Section 17a (4) sentence 4 to 6 of the Courts Constitution Act is applied accordingly to complaints against decisions via the recourse to the courts.

(4) The local administrative court in whose district the national dispute settlement body is headquartered is responsible for legal challenges to decisions by the national dispute settlement body under section 211 (2) in conjunction with section 72, section 128 (4), section 134 (5) or section 149. This also applies to actions to enforce the performance of an administrative act in the cases of sentence 1. Sentences 1 and 2 apply accordingly to disputes relating to decisions by the Bundesnetzagentur under Part 9.

Section 218 Requirements for the Bundesnetzagentur to submit documents and provide information

(1) For the submission of certificates or files, the transmission of electronic documents or the issuing of information by the Bundesnetzagentur, section 99 (1) of the Code of Administrative Court Procedure is to be applied with the proviso that the right of the Bundesnetzagentur to mark the documents as requiring confidential treatment replaces the right of the supreme supervisory authority under section 99 (1) sentence 2 of the Code of Administrative Court Procedure to refuse to submit the documents. The court dealing with the main issue informs the parties whose interest in confidentiality could be affected by the disclosure of the documents in the main proceedings about the fact that the documents have been presented.

(2) The court dealing with the main issue decides on application from a party which asserts an interest in maintaining the confidentiality of the presented documents by a decision on the extent to which sections 100 and 108 (1) sentence 2 and (2) of the Code of Administrative Court Procedure are to be applied to the decision on the main issue. The rights of the parties under sections 100 and 108 (1) sentence 2 and (2) of the Code of Administrative Court Procedure are to be excluded to the extent that, following a weighing up of all circumstances of the interest in confidentiality, the interest of the parties in a fair hearing is greater, including when the right of effective legal protection is considered. To this extent, the grounds for the decision on the main issue must not permit identification of the content of the non-disclosed documents. The members of the

court are obliged to preserve confidentiality.

(3) The application under subsection (2) sentence 1 must be made within one month after the court has informed the parties whose interests in confidentiality could be affected by the disclosure of the documents about the presentation of the documents by the Bundesnetzagentur. Section 100 of the Code of Administrative Court Procedure is not to be applied in this procedure. Subsection (2) sentence 3 and 4 applies accordingly.

(4) Appeal may be made to the Federal Administrative Court against the decision under subsection (2) sentence 1. The senate deciding on appeals on points of law which is responsible for the main issue decides on the appeal. Subsection (2) sentences 3 and 4 and subsection (3) sentence 2 apply accordingly.

Section 219

Information system on filed legal remedies

(1) The Bundesnetzagentur collects the following information about the legal remedies filed against its decisions:

1. the number and the general content of the filed legal remedies,
2. the duration of the proceedings and
3. the number of decisions subject to interim protection.

(2) The Bundesnetzagentur provides the Commission and BEREC with the information under subsection (1) and the decisions or court rulings in response to their substantiated request.

Section 220

Involvement of the Bundesnetzagentur in civil legal disputes

Section 90 (1) and (2) of the Act against Restraints of Competition applies accordingly to civil legal disputes which derive from this Act. In these cases, the Bundesnetzagentur and its president replace the Bundeskartellamt and its president.

Subdivision 4

International tasks

Section 221

International tasks

(1) The Bundesnetzagentur is active on behalf of the Federal Ministry for Economic Affairs and Energy or the Federal Ministry of Transport and Digital Infrastructure in the field of European and international telecommunications policy, and particularly in the cooperation in European and international institutions and organisations. This does not apply to tasks which the Bundesnetzagentur assumes on its own responsibility on the basis of this Act or other acts and on the basis of regulations of the European Union.

(2) The Bundesnetzagentur informs the Federal Ministry for Economic Affairs and Energy or the Federal Ministry of Transport and Digital Infrastructure in advance about the main content of planned meetings in European and international bodies. It summarises the main outcomes and conclusions of the meetings and transmits them without delay to the Federal

Ministry for Economic Affairs and Energy or the Federal Ministry of Transport and Digital Infrastructure. In the case of tasks which the Bundesnetzagentur assumes on its own responsibility under subsection (1) sentence 2, sentences 1 and 2 do not apply to the extent that compelling provisions demand the confidential treatment of information.

Section 222

Recognised clearing body for marine radio

The Bundesnetzagentur is the competent authority for the recognition of clearing bodies for international marine radio under the requirements of the International Telecommunication Union in the area of validity of this Act.

Part 12

Charges

Section 223

Fees and expenses; authorisation to issue ordinances

(1) The fees for decisions on the assignment of spectrum under sections 91 and 92 are, in derogation of section 9 (1) of the Act on Fees and Expenses for Federal Services, to be set in such a way that they act as a steering tool to ensure the optimal use and an efficient use of these assets which is committed to the aims of this Act. The aims prescribed under media legislation of the Länder are to be taken into consideration with regard to fees on decisions about the assignment of spectrum for broadcasting. The level of the fees must be reviewed in line with sentence 1 at regular intervals, but at least every five years, and must be adjusted if necessary. Decisions on fees under sentence 1 can provide for a payment in instalments which fall due annually. In the case of the expiry of a spectrum assignment due to renunciation under section 102 (8), a pro-rata reduction in fees is to be granted if this effects a more efficient usage of spectrum. No fees may be charged if spectrum is awarded via a procedure under section 100 (5) and (6).

(2) The Federal Ministry for Economic Affairs and Energy determines in consensus with the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry of Finance the fees under subsection (1) sentence 1 and the fees relating materially to a spectrum assignment by a Special Fees Ordinance under section 22 (4) of the Act on Fees and Expenses for Federal Services. The Federal Ministry for Economic Affairs and Energy can in consensus with the Federal Ministry of Finance and the Federal Ministry of Transport and Digital Infrastructure transfer the authorisation by ordinance to the Bundesnetzagentur. An ordinance under sentence 2, its amendment and its revocation require consensus with the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Finance and the Federal Ministry of Transport and Digital Infrastructure.

(3) The fees for decisions on the assignment of numbers can in derogation of section 9 subsection (1) of the Act on Fees and Expenses for Federal Services be set in a Special Fees Ordinance under section 22 (4) of the Act on Fees and Expenses for Federal Services in such a way that they act as a steering tool to ensure the optimal use and an efficient use of the numbers which is committed to the aims of this Act.

(4) The authorities responsible for the construction and maintenance of the public ways can issue rules in their field of responsibility under which only fees and expenses covering the administrative costs of the issuing of approval decisions under section 127 (1) can be charged for the use of public ways. Flat rate fees are admissible.

Section 224

Spectrum usage contribution

(1) The Bundesnetzagentur charges annual contributions to cover its costs for the administration, monitoring and enforcement of general assignments and rights of usage in the field of spectrum and orbit usages under this Act or the ordinances based on it. This includes in particular the costs of the Bundesnetzagentur for

1. the planning and continuation of spectrum usages including the necessary measurements, examinations and compatibility investigations in order to ensure efficient and undisrupted spectrum usage,
2. international cooperation, harmonisation and standardisation.

(2) The contributions must be paid by those to whom the spectrum is assigned. The shares of the costs are allocated, as far as possible on a resource-related basis, to the individual groups of users deriving from the spectrum allocation. A requirement to pay contributions also exists if spectrum is used on the basis of other administrative decisions or permanently without being assigned. This applies particularly to the rights issued up to 1 August 1996 to the extent that they contain stipulations about the usage of spectrum.

(3) In the costs to be paid under subsection (1), those costs are not to be included for which the following fees or contributions are already being charged under the cited provisions in the version currently in force and under ordinances based on these provisions:

1. a fee under section 223,
2. fees under the Special Fee Ordinances of the Federal Ministry for Economic Affairs and Energy determined in consensus with the Federal Ministry of Transport and Digital Infrastructure under section 22 (4) of the Act on Fees and Expenses for Federal Services,
3. contributions under section 31 of the Electromagnetic Compatibility Act or
4. contributions under section 35 of the Radio Equipment Act.

(4) The Federal Ministry for Economic Affairs and Energy is authorised, in consensus with the Federal Ministry of Finance and the Federal Ministry of Transport and Digital Infrastructure, to issue ordinances which do not require the approval of the Bundesrat stipulating details in line with the preceding subsections of

1. the group of parties required to pay contributions,
2. the contribution rates,
3. the calculation of the contributions and
4. the procedure for the collection of contributions including the method of payment.

Consideration must be given to the share of costs accruing in the public interest, reducing the contributions to be paid. The Federal Ministry for Economic Affairs and Energy can transfer the authorisation under sentence 1 by ordinance to the Federal Network Agency whilst ensuring that the consensus requirement is met. An ordinance of the Bundesnetzagentur, its amendment and its revocation require consensus with the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Finance and the Federal Ministry of Transport and Digital Infrastructure.

Section 225

Costs of out-of-court dispute settlement procedures

No fees and expenses are charged for the out-of-court dispute settlement procedures under section 68. Each party bears the costs arising from its participation in the procedure itself.

Section 226

Costs of the preliminary proceedings

(1) Fees and expenses are charged for preliminary proceedings.

(2) A fee up to the level of the fee stipulated for the challenged official act is charged for the complete or partial rejection of an objection. The protests office decides on the costs as appears just. In cases in which no fee is charged for the challenged official act of the Bundesnetzagentur, the fee is determined in line with section 34 (1) of the Court Fees Act; sections 3 to 9 of the Code of Civil Procedure are applied accordingly to the determination of the value of the matter under dispute.

(3) If a challenge is withdrawn following the beginning but before the end of substantive processing of the challenge, the fee is at most 75 per cent of the fee for the challenge. The protests office decides on the costs as appears just.

Section 227

Communication by the Bundesnetzagentur

The Bundesnetzagentur publishes an annual overview of its administrative costs and the total levies received. Where necessary, fees and contribution rates are adapted for the future in the respective ordinances.

Part 13

Provisions on fines

Section 228

Provisions on fines

(1) An administrative offence is committed by anyone who intentionally or recklessly violates an enforceable order under section 203 (4) sentence 1 no. 2.

(2) An administrative offence is committed by anyone who intentionally or negligently

1. contrary to section 4 does not present information or does not present it correctly, fully or in time,
2. contrary to section 5 (1) does not make a report or does not make it correctly, fully, in the prescribed fashion, or in time,
3. violates an enforceable order under
 - a) section 19 (1) sentence 1 in conjunction with section 18 (1) sentence 1 second half-sentence no. 2 or 3, section 25 (1), (2) or (3) sentence 1, section 29 (4) sentence 2, section 38 (4) sentence 1 or 2, section 44 (3) sentence 2, also in conjunction with section 46 (6), section 46 (5), section 47 (1) sentence 1, section 49 (2) first half-sentence, section 50 (4) sentence 1, section 161 (2) sentence 1 or (3) sentence 1 or section 188 (1),
 - b) section 47 (3), section 104 or section 203 (2) sentence 1 no. 1 or sentence 3 or
 - c) section 58 (5) sentence 2, section 123 (1), (2) sentence 1 or 2, (3) sentence 1, (4) or (5), section 149 (2) sentence 1 or section 166 (2) sentence 2 or (4) sentence 1,
4. contrary to
 - a) section 34 (1),
 - b) section 45 (1) or section 76 (2) no. 4 or
 - c) section 111 (1) no. 1does not submit a notification or does not do so in time,
5. charges a fee without authorisation under section 38 (1) sentence 1,

6. violates an ordinance under section 52 (4) or section 108 (6) sentence 1 or an enforceable order based on such an ordinance to the extent that the ordinance refers to this provision on fines for certain circumstances,
7. contrary to section 54 (3) sentence 1, also in conjunction with section 54 (3) sentence 3, does not make available a contract summary or does not do so in time,
8. contrary to section 55 (1) does not present information or does not present it correctly, fully or in time,
9. contrary to section 57 (2) sentence 1 does not inform the end-user or does not do so in time,
10. contrary to section 58 (2) sentence 1 does not produce documentation or does not do so in time,
11. contrary to section 59 (2) sentence 1 does not ensure that the service to the end-user is not interrupted in the case of a change of supplier,
12. contrary to section 59 (2) sentence 3 interrupts the telecommunications service,
13. contrary to section 61 (3) sentence 1 wholly or partially refuses to provide a service,
14. contrary to section 73 (3) sentence 1 refuses to connect a piece of telecommunications terminal equipment,
15. contrary to section 73 (3) sentence 3 does not make available access data or information or does not make it available correctly, fully, in the prescribed manner or in time,
16. contrary to section 74 (5) offers a service,
17. uses spectrum without a spectrum assignment under section 91 (1) sentence 1,
18. exercises a German orbit or spectrum usage right without a transferral under section 95 (2) sentence 1,
19. violates an enforceable condition under section 99 (3) sentence 1 no. 1,
20. contrary to section 109 (1) sentence 1 or 2, (2) sentence 1 or (3) does not provide information or does not do so correctly or fully,
21. contrary to section 109 (2) sentence 3 displays the pricing for a shorter time,
22. contrary to section 110 (1), also in conjunction with section 110 (2) sentence 1 or 2, (3) sentence 1 or (4) sentence 1 or 2, does not announce a price cited there or does not do so correctly, fully or in time,
23. contrary to section 112 (1) (2), (4) or (5) sentence 1 charges a price,
24. contrary to section 113 (1) sentence 1, also in conjunction with section 113 (1) sentence 2, does not terminate a call or does not do so in time,
25. contrary to section 114 (1) or (3) sentence 2 uses a dialler cited there,
26. contrary to section 115 (1) uses a call queue,
27. contrary to section 115 (2) sentence 1 does not ensure that the called party is informed,
28. contrary to section 119 (1) sentence 2 offers a reverse charge voice service,
29. contrary to section 120 (1) sentence 1, also in conjunction with section 120 (5) sentence 1, does not ensure that a complete telephone number is transmitted and marked,
30. contrary to section 120 (1) sentence 3, also in conjunction with section 120 (5) sentence 1, or contrary to section 120 (2) sentence 1 or 3 uses or transmits a telephone number cited there,
31. contrary to section 120 (1) sentence 4, also in conjunction with section 120 (5) sentence 1, alters a transmitted telephone number,
32. contrary to section 120 (3) sentence 1 does not ensure that a telephone number cited there is transmitted or displayed as the telephone number of the calling party,
33. contrary to section 120 (4) sentence 1 does not ensure that a telephone number cited there is only displayed in the cases cited there,
34. contrary to section 120 (4) sentence 2 first half-sentence does not ensure that the entry path is marked,
35. contrary to section 164 (1) sentence 2, also in conjunction with section 164 (2) or an ordinance under section 164 (5)

- sentence 1 no. 2 does not ensure that an emergency call is set up,
36. contrary to section 164 (1) sentence 3, also in conjunction with section 164 (2) or an ordinance under section 164 (5) sentence 1 no. 3, or contrary to section 164 (4) sentence 1 does not ensure that the telephone number or the data cited there are transmitted,
 37. contrary to section 164 (3) sentence 1, also in conjunction with an ordinance under section 164 (5) sentence 5 no. 6, does not ensure that an emergency call cited there is possible,
 - 37a. contrary to section 164a (1) no. 1, also in conjunction with an ordinance under section 164a (4) no. 1, 2 or 3, does not maintain a facility cited there or does not do so correctly,
 - 37b. contrary to section 164a (1) no. 2, also in conjunction with an ordinance under section 164a (4) no. 1, 2 or 3, does not ensure a warning cited there is sent out,
 - 37c. violates an enforceable order under 164a (2), also in conjunction with an ordinance under section 164a (4) no. 1, 2 or 3,
 38. contrary to section 166 (2) sentence 1 or (4) sentence 2 or section 181 sentence 2 does not present a security concept or does not do so correctly, fully or in time,
 39. contrary to section 168 (1) sentence 1, section 170 (1) no. 3 letter a, (2) no. 3 or (3) sentence 1 or section 175 (1) sentence 2 no. 2 does not make a communication or does not do so correctly, fully or in time,
 40. contrary to section 169 (1) sentence 1 or 2 or (5) sentence 1 does not provide information or does not do so correctly, fully or in time,
 41. contrary to section 169 (3) sentence 1 does not keep the list cited there or does not do so correctly or fully,
 42. contrary to section 170 (1) sentence 1 no. 1 in conjunction with an ordinance under section 170 (5) no. 1 letter a does not maintain a technical facility or make an organisational arrangement,
 43. contrary to section 170 (1) sentence 1 no. 2 in conjunction with an ordinance under section 170 (5) no. 1 letter a does not provide a possibility for control or does not provide it in time or does not make control possible or does not do so in time,
 44. contrary to section 170 (1) sentence 1 no. 3 letter b does not nominate a person authorised to take delivery of documents in Germany or does not do so in time,
 45. contrary to section 170 (1) sentence 1 no. 5 does not permit an examination,
 46. contrary to section 170 (1) sentence 1 no. 6 does not tolerate the setting up or operation of a technical means cited there or grant access to such a technical means,
 47. contrary to section 170 (8) sentence 3 does not remove a fault or does not do so in time,
 48. contrary to section 170 (9) sentence 1 does not provide a network termination point, does not do so in the prescribed manner, or does not do so in time,
 49. contrary to section 172 (1), also in conjunction with section 172 (3), or contrary to section 172 (4) does not collect data cited there, or does not collect them correctly, fully or in time, does not store them, or does not store them correctly, fully or in time, or does not correct them, or does not correct them correctly, fully or in time,
 50. contrary to section 172 (2) sentence 1 does not review the correctness of the data, or does not do so correctly, fully or in time,
 51. contrary to section 172 (5) sentence 2 uses or processes incorrect data,
 52. contrary to section 172 (5) sentence 3 does not transmit an alteration, or does not do so correctly, fully or in time,
 53. contrary to section 172 (6) sentence 3 does not delete data or does not do so in time,
 54. contrary to section 173 (2) sentence 1 no. 1 does not ensure that the Bundesnetzagentur can download data from the customer files in an automated manner and at any time,
 55. contrary to section 173 (2) sentence 2 does not ensure that it cannot gain knowledge of the downloaded data,
 56. contrary to section 174 (6) sentence 2 does not preserve secrecy,
 57. contrary to section 176 (8) does not delete data or does not do so in time, or does not ensure that deletion takes

place,

58. contrary to section 177 (2) or section 179 (2) uses data cited there for purposes other than those cited there,
59. contrary to section 178 sentence 1 does not ensure that data are protected,
60. contrary to section 179 (1) sentence 1 does not ensure that a record is kept of each access,
61. contrary to section 182 (1) sentence 1, section 183 (1) sentence 2 or section 190 (1) sentence 2 does not issue information or does not do so correctly, fully or in time,
62. contrary to section 185 (1) does not maintain a telecommunications service, the network operation or a service,
63. contrary to section 186 (1) does not provide a line or a transmission path or does not do so in time or does not repair a fault or does not do so in time or does not increase a data transmission rate or does not do so in time,
64. contrary to section 187 (2) sentence 1 does not make an arrangement or does not do so in time,
65. contrary to section 187 (2) sentence 2 does not remove an arrangement or does not do so in time,
66. contrary to section 187 (2) sentence 3 or does not provide information, or does not do so correctly, fully or in time,
67. contrary to section 190 (1) sentence 5 does not tolerate a review or
68. contrary to section 203 (1) sentence 1 does not make information available, or does not do so correctly, fully or in time.

(3) An administrative offence is committed by anyone who violates Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172 of 30 June 2012, p. 10), as last amended by Regulation (EU) 2017/920 (OJ L 147 of 9 June 2017, p. 1), by deliberately or negligently

1. contrary to Article 3 (5) sentence 2 not presenting a draft or not doing so in time,
2. contrary to Article 5 (1) sentence 2 not complying with a request cited there or not doing so without delay following receipt of the request,
3. contrary to Article 6a imposing a charge cited there,
4. contrary to Article 6e (1) subparagraph 2 sentence 1 imposing a surcharge,
5. contrary to Article 6e (1) subparagraph 3 sentence 1 or 3 not invoicing a charge correctly,
6. contrary to Article 6e (1) subparagraph 3 sentence 2 taking a different minimum charging period as a basis,
7. contrary to Article 11 altering a technical characteristic,
8. contrary to Article 14 (1) subparagraph 1 not providing pricing information cited there or not doing so correctly, fully, in the prescribed manner, or in time,
9. contrary to Article 15 (2) a) sentence 1 in conjunction with sentence 2 not sending a notification or not doing so in time,
10. contrary to section 15 (3) subparagraph 6 sentence 1 not ensuring that that a notification cited there is transmitted,
11. contrary to Article 15 (3) subparagraph 7 sentence 3 not ceasing the provision or charging of a service cited there or not doing so in time,
12. contrary to Article 15 (3) subparagraph 8 not undertaking an alteration cited there or not doing so in time or,
13. contrary to Article 16 (4) sentence 2 not transmitting information, or not doing so correctly, fully or in time.

(4) An administrative offence is committed by anyone who violates Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and retail charges for regulated intra-EU communication and amending Directive 2002/22/EC and Regulation (EU) 531/2012 (OJ L 310 of 26 November 2015, p. 1) as last amended by Regulation (EU) 2018/1971 (OJ L 321 of 17 December 2018 p. 1), by deliberately or negligently

1. making an agreement or applying a commercial practice as a provider of internet access services contrary to Article 3 (2),
2. contrary to Article 3 (3) subparagraph 3 first half-sentence applying a traffic management measure cited there,
3. contrary to Article 4 (1) subparagraph 1 sentence 1 not ensuring that that a contract cited there contains the information cited there,
4. violating an enforceable order under Article 5 (1) subparagraph 1 sentence 2,
5. contrary to Article 5 (2) sentence 2 not presenting information cited there, or not doing so correctly, fully or in time, or not transmitting it or not transmitting it correctly, fully or in time,
6. contrary to Article 5a (2) sentence 2 not informing a consumer not informing him or her correctly, fully or in time or
7. contrary to Article 5a (5) sentence 1, also in conjunction with sentence 3, not stipulating a limit cited there or not doing so correctly or in time as a provider of regulated intra-EU communications.

(5) An administrative offence is committed by anyone who, as a provider of regulated intra-EU communications under Article 2 (2) no. 3 of Regulation (EU) 2015/2120 deliberately or negligently

1. calculates a retail price for a consumer which exceeds the retail price cited in Article 5a (1) of Regulation (EU) 2015/2120,
2. does not ensure that a change in tariff cited in Article 5a (3) of Regulation (EU) 2015/2120 is carried out, or
3. does not ensure that a consumer can switch from or back to a tariff cited in Article 5a (4) of Regulation (EU) 2015/2120 free of charge in accordance with that provision.

(6) An administrative offence is committed by anyone who violates Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC (OJ L 60I of 2 March 2018, p. 1), by deliberately or negligently

1. blocking or restricting access to the online user interface contrary to Article 3 (1),
2. contrary to Article 3 (2) subparagraph 1 forwarding a customer to a version of the online user interface cited there,
3. applying different General Terms and Conditions contrary to Article 4 (1) or
4. applying different conditions for a payment process contrary to Article 5 (1).

(7) The administrative offence may be punished

1. in the cases of
 - a) subsection (2) no. 19,
 - b) subsection (3) no. 3 and 4 and subsection (5) no. 1 and
 - c) subsection (4) no. 1, 2 and 4
 by a fine of up to one million euros,
2. in the cases of subsection (2) no. 3 letter a, no. 4 letter a, no. 17, 42, 43, 47, 54 and 57 to 59 by a fine of up to five hundred thousand euros,
3. in the cases of subsection (2) no. 10, 37 to 38, 46, 49, 50, 53 and 60 and of subsection (6) by a fine of up to three hundred thousand euros,
4. in the cases of subsection (2) no. 3 letter c, no. 6 to 8, 14 to 16, 20 to 36, 40, 61, 63 to 66 and 68, of subsection (3) no. 1, 2 and 8, of subsection (4) no. 3 and 6 and of subsection (5) no. 2 and 3 by a fine of up to one hundred thousand euros,
5. in the cases of subsection (2) no. 11, 18 and 56 by a fine of up to fifty thousand euros and

6. in the other cases of subsections (1) to (4) by a fine of up to ten thousand euros.

(8) In the case of a legal person or association of persons with an average annual turnover of more than

1. 50 million euros an administrative offence under subsection (2) no. 19 in conjunction with section 30 (1) of the Act on Administrative Offences can in derogation of subsection (7) no. 1 letter a in conjunction with section 30 (2) sentence 2 of the Act on Administrative Offences be punished by a fine of up to 2 per cent,
2. 100 million euros an administrative offence under subsection (4) no. 1, 2 or 4, in each case in conjunction with section 30 (1) of the Act on Administrative Offences can in derogation of subsection (7) no. 1 letter c in conjunction with section 30 (2) sentence 2 of the Act on Administrative Offences be punished by a fine of up to 1 per cent

of the average annual turnover which was achieved by the legal person or association of persons worldwide in the last three financial years prior to the decision by the authority. The average annual turnover under sentence 1 must include the average annual turnover of all undertakings which are affiliated or merged with the legal person or association of persons under section 3 no. 69. The average annual turnover can be estimated.

(9) The administrative authority within the meaning of section 36 (1) no. 1 of the Act on Administrative Offences is the Bundesnetzagentur.

(10) The Bundesnetzagentur is the competent enforcement authority for the procedure relating to the stipulation of a fine. The enforcement of the fine imposed in the judicial administrative offences procedure and of the amount of money, the confiscation of which was ordered under section 29a of the Act on Administrative Offences, takes place by the Bundesnetzagentur as the enforcement authority on the basis of a certified copy to be issued by the registry clerk of the court of the operative provisions of the judgement which is furnished with the confirmation of enforceability in line with the provisions on the execution of decisions on fines. The fines and the amounts of money, the confiscation of which was ordered under section 29a of the Act on Administrative Offences, accrue to the Federal Cash Office, which also bears the costs imposed on the Treasury.

Part 14

Transitional and final provisions

Section 229

Area of validity

The provisions of this Act apply in line with the United Nations Convention on the Law of the Sea of 10 December 1982 (Federal Law Gazette 1994 II. p. 1798, 1799) also in the area of the territorial waters and in the area of the German exclusive economic zone.

Section 230

Transitional provisions

(1) Existing spectrum and number assignments and rights of way which were issued in the context of section 8 of the Telecommunications Act of 25 July 1996 (Federal Law Gazette I. p. 1120) remain effective. The same applies to other previously acquired rights to use spectrum.

(2) Rights and obligations which have been enacted on the basis of the Telecommunications Act of 25 July 1996 or of 22 July 2004 (Federal Law Gazette I p. 1190) are regarded as rights and obligations under this Act within the meaning of sections 202 and 212.

- (3) Stipulations which have been made on market definitions and analyses under sections 10 and 11 of the Telecommunications Act of 22 June 2004 (Federal Law Gazette I. p. 1190) are regarded as stipulations under sections 10 and 11 of this Act.
- (4) Section 71 (2) will not be applied until 30 June 2024 if the telecommunications service is provided in the context of the rental and leasing relationship and the consideration provided in return for this is only billed as operating costs.
- (5) Each party can terminate a purchase contract concluded before 1 December 2021 on the supply of buildings or residential units located in the buildings with telecommunications services due to the restriction on the possibility to pass on costs under section 2 sentence 1 no. 15 letter a and b of the Ordinance on Operating Costs at the earliest with effect from 1 July 2024 without the observance of a period of notice to the extent that the parties have made no other agreement for this case. The termination does not entitle the other party to compensation.
- (6) Until the entry into force of a price stipulation for premium rate services, directory enquiry services or mass calling services under section 123 (7), section 109 applies with the proviso that the price to be paid for the use of these services for landline calls must be cited with a reference to the possibility of different prices for calls from mobile communications networks to the extent that prices apply to calls from mobile communications networks that differ from prices for landline calls.
- (7) Until the entry into force of a price stipulation for mass calling services under section 123 (7), section 110 (3) applies with the proviso that the service provider must announce to the end-user the price to be paid for the use of the service for landline calls with a reference to the possibility of different prices for calls from mobile communications networks as soon as the service is used; this also applies if the price exceeds 1 euro per minute or use.
- (8) The requirements of section 120 (3) and (4) must be met at the latest from 1 December 2022.
- (9) The Bundesnetzagentur can in derogation of section 172 (2) sentence 4 and 5 stipulate that for a transitional period to be determined by it of not more than twelve months after entry into force of this Act it is possible to dispense with the need for previous evidence of conformity.
- (10) The stipulations made by the Bundesnetzagentur prior to the entry into force of this Act in accordance with section 6 (1) sentence 2 of the Act Ensuring the Provision of Posts and Telecommunications Services of 24 March 2011 (Federal Law Gazette I p. 506, 941), as last amended by Article 12 (3) of the Act of 21 December 2020 (Federal Law Gazette I. p. 3229), remain effective until they are replaced by new stipulations under section 186 (2) sentence 2. Certificates issued under section 6 (2) sentence 2 of the Act Ensuring the Provision of Posts and Telecommunications Services remain valid until the expiry of the ten-year period of validity or the shorter period noted on them.
- (11) The information present at Bundesnetzagentur at the time of entry into force of this Act in line with section 77a (2) in conjunction with subsection (1) sentence 1 of the Telecommunications Act of 25 July 1996 or of 22 June 2004 (Federal Law Gazette I p. 1190) may continue to be used by the single information point of the Federation in line with the inspection conditions in accordance with section 77a (3) sentence 4, section 77b (6) sentence 3 and section 77h (6) sentence 3 of the Telecommunications Act of 22 June 2004 even after the entry into force of this Act until a new obligation has been brought about in accordance with section 79 (2).
- (12) The requirements under section 165 (3) and section 171 must be met at the latest from 1 December 2022.
- (13) The admissibility of the legal recourse against a court decision is based on the previously valid provisions if the court decision was announced before the entry into force of this Act or was served ex officio instead of an announcement.
- (14) Applications made before the entry into force of this Act under section 99 (2) of the Code of Administrative Court Procedure are subject to the previous provisions.
- (15) Sections 6, 7 (2) and section 8 in the version in force from 1 December 2021 are to be applied for the first time to annual financial reports and statements on activities for the financial year commencing after 31 December 2020.