



Belgian Institute for Postal Services  
and Telecommunications

# **Procedure for the granting of rights of use for the 2520- 2535 MHz and 2640-2655 MHz frequency bands**

## **Information memorandum**

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## INTRODUCTORY COMMENTS

This memorandum was drafted by BIPT within the framework of the procedure for the granting of rights of use for the 2520-2535 MHz and 2640-2655 MHz frequency bands.

The terms and expressions used in this memorandum are defined in Annex.

This memorandum is meant for information purposes only. It is made available to the market for the sole purpose of informing those considering a possible participation in the assignment procedure. This memorandum has no binding legal effect.

This memorandum summarises the regulation applicable to the assignment procedure for the 2520-2535 MHz and 2640-2655 MHz frequency bands. It describes how the procedure will take place. It also reminds the obligations imposed on rights holders. However it should be clear that the ECA and the Royal Decree on 2600 MHz and any other Belgian or European law or regulation relevant in this matter prevail over the content of this memorandum.

Each recipient must make its own independent assessment of the potential value of an assignment of spectrum. The candidates decide themselves what amounts they are prepared to propose, based on their own calculations. BIPT will not provide any help or assistance in this matter.

The memorandum has no contractual or pre-contractual value and does not commit BIPT in any way. It shall not be used as a legal foundation for possible appeals that could be lodged concerning the auction or the granting of rights of use, nor as support for potential claims for damages or any other proceedings instituted against BIPT.

All the information in this memorandum may be updated, modified or corrected during the procedure for the granting of rights of use for the 2520-2535 MHz and 2640-2655 MHz frequency bands, depending on the evolution of the existing normative and factual background. Any amendment will be published under the same terms as the publication of this memorandum.

BIPT accepts no responsibility with regard to the accuracy or completeness of the information contained in the memorandum or any other information made available to the market. In particular, but without prejudice to the generality of the foregoing, no representation or warranty is given as to any future projections, estimates, prospects or returns generated from the rights of use.

Via this memorandum, BIPT does not provide any financial, legal, fiscal, accounting or other advice.

BIPT disclaims all responsibility for any prejudice that might result from the use of the memorandum by its recipients.

## TABLE OF CONTENTS

Chapter 1.	Introduction .....	5
Chapter 2.	Existing rights of use .....	6
2.1.	800 MHz band .....	6
2.2.	900 MHz band .....	6
2.3.	1800 MHz band .....	6
2.4.	2 GHz band .....	7
2.5.	2.6 GHz band .....	7
2.6.	3.6 GHz band .....	8
Chapter 3.	Conditions for the exercise of the rights of use .....	9
3.1.	Spectrum to be assigned .....	9
3.2.	Validity period of the rights of use .....	9
3.3.	Technologies allowed .....	9
3.4.	International frequency coordination .....	10
3.5.	Belgium's exclusive economic zone in the North Sea .....	10
3.6.	Unique fee .....	11
3.7.	Annual fees .....	12
Chapter 4.	Organisation of the assignment procedure .....	13
4.1.	General .....	13
4.2.	Spectrum cap .....	13
4.3.	Application files .....	13
4.4.	Relevant groups .....	13
4.5.	Deposits .....	14
4.5.1.	<i>Deposit interest</i> .....	14
4.5.2.	<i>Ratcheting the deposit</i> .....	14
4.5.3.	<i>Possible repayment of the deposit</i> .....	15
4.6.	Admissibility .....	15
4.7.	Course of the procedure .....	15
4.7.1.	<i>General</i> .....	15
4.7.2.	<i>Electronic tendering system</i> .....	15
4.7.3.	<i>Disruption to the auction</i> .....	16
4.7.4.	<i>Collusion</i> .....	16
4.7.5.	<i>Ascending multi-round auction</i> .....	16
4.7.6.	<i>Granting of rights of use</i> .....	17
Chapter 5.	Regulatory issues .....	18
5.1.	Obligations .....	18
5.2.	Modification of the rights of use .....	18
5.3.	Breach and revocation .....	18
5.4.	Notification under Article 9 of the ECA .....	19
5.5.	Antenna sites .....	19
5.5.1.	<i>Town planning permit and environmental exposure limits</i> .....	19
5.5.2.	<i>Site sharing</i> .....	20
5.6.	Infrastructure and spectrum sharing .....	22
5.7.	Spectrum hoarding .....	22
5.8.	Numbering .....	22
5.9.	International Mobile Subscriber Identity Number .....	23
5.10.	Number portability .....	23
5.11.	Data retention .....	24
5.12.	Facilitation of the identification and legal interception .....	25
5.13.	MTR tariffs .....	25
5.14.	Obligations regarding the social element of the universal service .....	26
5.15.	Funding of the universal service .....	27

5.16. Funding of the Office of the Ombudsman.....	30
5.17. Spectrum trading.....	31
Chapter 6. Timetable .....	32
Chapter 7. Additional information.....	33
7.1. Information request.....	33
7.2. Availability of the memorandum.....	33
Annex. Definitions and glossary.....	34

## Chapter 1. Introduction

1. This memorandum concerns the procedure for the granting of user rights for 15 MHz duplex in the 2.6 GHz band, which will be organised by BIPT.
2. This memorandum does on no account exempt candidates from reading the regulation concerning the granting procedure.
3. Candidates wishing to submit applications to take part in the granting procedure are presumed to have read and understood the auction rules. These will be published on BIPT's website.
4. In particular, the memorandum:
  - summarises the steps which recipients are to take in order to submit their applications and take part in the granting procedure;
  - summarises the principles of some of the rules and the expected timetable of the granting procedure; and
  - provides an outline of the regulatory framework.
5. The granting procedure is governed in particular by the ECA. It will be conducted in compliance with the provisions of the Royal Decree on 2600 MHz.
6. The consolidated versions of the ECA and the Royal Decree on 2600 MHz are available on BIPT's website.
7. Information on the currently assigned spectrum is provided in Chapter 2.
8. Chapter 3 provides information on the conditions for the exercise of the rights of use.
9. Information on the organisation of the granting procedure is provided in Chapter 4. Particularly, information on the application files are provided in section 4.3.
10. Chapter 5 provides information on regulatory issues.
11. Chapter 6 provides an indicative timetable of the intended process.
12. Contact information for making enquiries or obtaining further information is provided in Chapter 7.

## Chapter 2. Existing rights of use

13. The rights of use mentioned in this section are valid across the entire national territory. However, these rights of use are not valid within national airspace or Belgium's exclusive economic zone in the North Sea.

### 2.1. 800 MHz band

14. Proximus, Orange Belgium and Telenet Group have each 10 MHz duplex in the 800 MHz band.

15. The assigned frequencies are distributed as follows:

	<b>Base station reception (MHz)</b>	<b>Base station transmission (MHz)</b>
Telenet Group	832-842	791-801
Proximus	842-852	801-811
Orange Belgium	852-862	811-821

**Table 1 : Existing rights in the 800 MHz band**

16. The rights of use for the 800 MHz band are valid until 29 November 2033. Rights of use may be extended by BIPT for supplementary five-year periods from 30 November 2033.

### 2.2. 900 MHz band

17. Proximus, Orange Belgium and Telenet Group respectively have 62, 58 and 51 GSM channels<sup>1</sup> in the 900 MHz band.

18. Channels are distributed as follows<sup>2</sup>:

- Proximus, 2-30 and 61-93;
- Orange Belgium, 32-59 and 95-124;
- Telenet Group, 975-1025.

19. The existing rights of use for the 900 MHz band are valid until 14 March 2021.

### 2.3. 1800 MHz band

20. Proximus, Orange Belgium and Telenet Group have each 25 MHz duplex in the 1800 MHz band.

21. The assigned frequencies are distributed as follows<sup>3</sup>:

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<sup>1</sup> A GSM channel has a bandwidth of 200 kHz duplex.

<sup>2</sup> Decision of the BIPT Council of 13 May 2015 on the division of spectrum in the 900 MHz band.

<sup>3</sup> Decision of the BIPT Council of 15 December 2014 on the granting of user rights and on the division of spectrum in the 900 MHz and 1800 MHz frequency bands.

	<b>Base station reception (MHz)</b>	<b>Base station transmission (MHz)</b>
Proximus	1710-1735	1805-1830
Orange Belgium	1735-1760	1830-1855
Telenet Group	1760-1785	1855-1880

**Table 2 : Existing rights in the 1800 MHz band**

22. The existing rights of use for the 1800 MHz band are valid until 14 March 2021.

## 2.4. 2 GHz band

23. Proximus has 15 MHz duplex in the paired (or FDD) bands and 5.4 MHz duplex in the unpaired (or TDD) band, while Orange Belgium and Telenet Group each have 14.8 MHz duplex in the paired bands and 5 MHz duplex in the unpaired band.

24. The assigned frequencies are distributed as follows:

	<b>Base station reception (MHz)</b>	<b>Base station transmission (MHz)</b>	<b>Unpaired frequencies (MHz)</b>
Proximus	1920.3-1935.3	2110.3-2125.3	1914.9-1920.3
Telenet Group	1935.3-1950.1	2125.3-2140.1	1899.9-1904.9
Orange Belgium	1964.9-1979.7	2154.9-2169.7	1909.9-1914.9

**Table 3 : Existing rights in the 2 GHz band**

25. The bands 1950.1-1964.9 MHz and 2140.1-2154.9 MHz, i.e. 14.8 MHz duplex, are not assigned<sup>4</sup>.

26. The existing rights of use for the 2 GHz band are valid until 14 March 2021.

## 2.5. 2.6 GHz band

27. Proximus and Orange Belgium have each 20 MHz duplex in the paired bands whereas Telenet Group has 15 MHz duplex in the paired bands. Dense Air Belgium has 45 MHz in the unpaired band.

28. The assigned frequencies are distributed as follows:

	<b>Base station reception (MHz)</b>	<b>Base station transmission (MHz)</b>	<b>Unpaired frequencies (MHz)</b>
Proximus	2500-2520	2620-2640	

<sup>4</sup> The bands 1950.1-1964.9 MHz and 2140.1-2154.9 MHz have been assigned to e-BO Enterprises, in Belgium's exclusive economic zone in the North Sea, via the BIPT Council Decision of 8 April 2019 regarding the granting to e-BO Enterprises of temporary user rights for the establishment and operation of transmission installations at the wind farms situated in the Belgian economic zone in the North Sea.

Any operator can provide:

- mobile communications services on board aircraft within the whole 2 GHz band, pursuant to the Royal Decree of 15 July 2013 regarding mobile communications services on board aircraft.
- mobile communications services on board ships within the 1955-1960 MHz and 2145-2150 MHz frequency bands, pursuant to the Royal Decree of 5 November 2013 regarding mobile communications services on board ships.

	<b>Base station reception (MHz)</b>	<b>Base station transmission (MHz)</b>	<b>Unpaired frequencies (MHz)</b>
Telenet Group	2535-2550	2655-2670	
Orange Belgium	2550-2570	2670-2690	
Dense Air Belgium			2575-2620

**Table 4 : Existing rights in the 2.6 GHz band**

29. The existing rights of use for the 2.6 GHz band are valid until 30 June 2027. As from 1 July 2027 user rights may be extended by BIPT for supplementary five-year periods.
30. The bands 2520-2535 MHz and 2640-2655 MHz, i.e. 15 MHz duplex, have not been assigned<sup>5</sup> and are thus available. These frequency bands are the subject of the assignment procedure.

## **2.6. 3.6 GHz band**

31. The 3430-3450 MHz and 3530-3550 MHz<sup>6</sup> frequency blocks have been assigned to Gridmax<sup>7</sup> and Citymesh<sup>8</sup>.
32. The existing rights of use of Gridmax are valid until 6 March 2021<sup>9</sup>.
33. The existing rights of use of Citymesh are valid until 6 May 2025.

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<sup>5</sup> The bands 2520-2535 MHz and 2640-2655 MHz have been assigned to e-BO Enterprises, in Belgium's exclusive economic zone in the North Sea, via the BIPT Council Decision of 8 April 2019 regarding the granting to e-BO Enterprises of temporary user rights for the establishment and operation of transmission installations at the wind farms situated in the Belgian economic zone in the North Sea.

Any operator can provide mobile communications services on board ships within the 2525-2530 MHz and 2645-2650 MHz frequency bands, pursuant to the Royal Decree of 5 November 2013 regarding mobile communications services on board ships.

<sup>6</sup> Pursuant to the draft Royal Decree amending the Royal Decree of 24 March 2009 on radio access in the 3410-3500/3510-3600 MHz and 10150-10300/10500-10650 MHz frequency bands, the 3400-3800 MHz band should be reorganised as quickly as possible.

<sup>7</sup> In the municipalities of Bièvre, Bouillon, Gedinne and Vresse-sur-Semois.

<sup>8</sup> In the municipalities of Antwerpen, Blankenberge, Bredene, Brugge, Brussels, De Haan, De Panne, Gent, Knokke-Heist, Koksijde, Middelkerke, Nieuwpoort and Oostende.

<sup>9</sup> The draft Royal Decree amending the Royal Decree of 24 March 2009 on radio access in the 3410-3500/3510-3600 MHz and 10150-10300/10500-10650 MHz frequency bands provides that the rights of use of Gridmax may be extended until 6 May 2025.

## Chapter 3. Conditions for the exercise of the rights of use

### 3.1. Spectrum to be assigned

34. A single lot of 15 MHz duplex will be auctioned. The 2640-2655 MHz band must be used for transmission by the base station. The 2520-2535 MHz band must be used for reception by the base station.

### 3.2. Validity period of the rights of use

35. The rights of use are valid for a 15-year period as of the day of notification<sup>10</sup>.

36. Rights of use may be extended by BIPT for supplementary periods of maximum five years. Should BIPT decide not to extend the rights of use, it shall have to take a decision two years before the term expires at the latest (see Article 3, §1, of the Royal Decree 2600 MHz).

37. The criteria BIPT must consider in the context of extension decisions concern (see Article 49, paragraph 2, subparagraph 3, of directive 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code):

- the need to ensure the effective and efficient use of the radio spectrum concerned;
- the objective of reaching wireless broadband coverage of the territory and population at high quality and speed, as well as coverage of major transport paths;
- the objective of facilitating the rapid development of new wireless technologies and applications;
- the need to fulfil general interest objectives related to ensuring safety of life, public order, public security or defence; and
- the need to ensure undistorted competition.

38. For the first additional period, BIPT will grant a five-year extension provided that:

- it has not initiated enforcement action for non-compliance with the conditions of the rights of use of radio spectrum pursuant to Article 21 of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors;
- it does not conclude that such an extension would not comply with the criteria referred to in point 37.

### 3.3. Technologies allowed

39. Generally speaking, all types of technologies may be used in the radio frequency bands reserved entirely or partially for publicly available electronic communications services.

40. Applicants shall have to indicate in their applications which technology they plan to use if they obtain a right of use during the assignment procedure.

41. The operator is solely responsible for the operation of its network. It is responsible for any radio frequency interference caused by the base stations in its network to other users of the radio spectrum.

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<sup>10</sup> Notification of the rights of use referred to in Article 35, §2, of the Royal Decree on 2600 MHz.

42. All radio equipment in base stations shall comply with the applicable rules. In practice, this means that the equipment must comply with the requirements of the RED Directive<sup>11</sup>, as transposed in Articles 32 and seq. of the ECA and in the Royal Decree of 25 March 2016 on the making available on the market of radio equipment.
43. BIPT retains the right to change, if need be, the technical parameters that are applicable to the radio equipment.
44. The technical and operational conditions that are necessary to avoid harmful interference are provided in the annex to the Royal Decree on 2600 MHz. The annex to the Royal Decree on 2600 MHz is compliant with decision 2008/477/EC<sup>12</sup>.
45. The BIPT Council Decision of 11 September 2017 on the coexistence between 4G operators in the 2500-2690 MHz band and radars in the 2700-2900 MHz band is also applicable.
46. In July 2018, the European Commission mandated the CEPT to review the harmonised technical conditions applying to spectrum use with a view to the introduction of 5G, for the 2.6 GHz band, among others. Once the European Commission has adopted a decision reviewing decision 2008/477/EC, BIPT<sup>13</sup> will adopt a decision aiming at implementing the decision of the European Commission.

### **3.4. International frequency coordination**

47. BIPT has concluded an agreement<sup>14</sup> on border coordination for the 2.6 GHz band. This agreement is available on BIPT's website.
48. The field limits imposed on operators in the border areas are:
  - 65 dB $\mu$ V/m/5 MHz at the border;
  - 49 dB $\mu$ V/m/5 MHz at 6 km within the neighbouring country.
49. The operator shall observe the obligations resulting from the cross-border coordination.
50. BIPT encourages agreements between operators to improve coordination in border areas and the coverage of these areas, in compliance with the agreement<sup>15</sup> regarding the approval of arrangements between operators.

### **3.5. Belgium's exclusive economic zone in the North Sea**

51. The bands 2520-2535 MHz and 2640-2655 MHz have been assigned to e-BO Enterprises, in Belgium's exclusive economic zone in the North Sea, via the BIPT Council Decision of 8 April 2019 regarding the granting to e-BO Enterprises of temporary user rights for the establishment and operation of transmission installations at the wind farms situated in the Belgian economic zone in the North Sea.

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<sup>11</sup> Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC.

<sup>12</sup> Commission Decision of 13 June 2008 on the harmonisation of the 2500 - 2690 MHz frequency band for terrestrial systems capable of providing electronic communications services in the Community.

<sup>13</sup> Since 8 May 2014, the technical and operational conditions that are necessary to prevent harmful interference are laid down by BIPT.

<sup>14</sup> Agreement between the Administrations of Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland on frequency planning and frequency coordination at border areas for terrestrial systems capable of providing electronic communications services in the frequency band 2500-2690 MHz, Brussels, 22 November 2017

<sup>15</sup> Agreement between the Administrations of Belgium, France, Germany, Luxembourg, the Netherlands and Switzerland concerning the approval of arrangements between operators of terrestrial systems capable of providing electronic communication services, Brussels, 11 October 2011.

52. At the time the 2520-2535 MHz/2640-2655 MHz bands were being assigned to e-BO Enterprises, these frequency bands were not used for terrestrial networks. However, the aforementioned decision of 8 April 2019 provides that e-BO Enterprises shall take into account that these bands could be used for terrestrial networks afterwards.
53. For the coordination between terrestrial networks operating on the frequency bands subject to the assignment procedure and the networks within Belgium's exclusive economic zone in the North Sea, the same principles as for international coordination (see section 3.4) will be used.
54. For the networks in Belgium's exclusive economic zone in the North Sea, the border to take into account is the coast. For terrestrial networks, the border to take into account is the line marking Belgium's exclusive economic zone in the North Sea<sup>16</sup>.
55. As a reminder, the field limits for the 2500-2690 MHz band are:
  - 65 dB $\mu$ V/m/5 MHz at the border;
  - 49 dB $\mu$ V/m/5 MHz at 6 km beyond the border.
56. Preferential PCI codes<sup>17</sup> 0 to 41 have been assigned to e-BO Enterprises. Terrestrial networks must consequently use the remaining preferential PCI codes (42 to 251).

### 3.6. Unique fee

57. The minimum bid in the first round of the auction for the single lot (or reserve price) is set by Article 30 of the ECA. Article 30 of the ECA sets, for the 2.6 GHz band, an amount of 2,778 EUR per assigned MHz and per month of validity of the rights of use.
58. The rights of use are valid for a period of 15 years. The reserve price of the single lot must then be calculated for 180 months. Based on Article 30 of the ECA, the reserve price would amount to 15,001,200 EUR. The minimum bid in the first round of the auction must, however, be a multiple of 10,000 EUR (Article 24, §4, of the Royal Decree on 2600 MHz). Consequently, the minimum bid in the first round of the auction for the single lot amounts to 15,010,000 EUR.
59. Mobile operators are required, at the beginning of the period of validity of the licence, to pay a unique fee in accordance with the conditions of Article 30, §§1 /1 to 1/4 of the ECA. Each eligible candidate's deposit (including accrued interest) will be offset against the fee to be paid at the time of notification by BIPT of the granting of rights of use to that candidate.
60. Operators may choose between two methods of payment: either they pay the unique fee as a lump sum, or they pay by annual instalments.
61. In case of a lump sum the operator settles the whole unique fee within 15 days following the start of the period of validity of the rights of use<sup>18</sup>.
62. If the operator pays by instalments, it settles the unique fee as follows:
  - the operator pays proportionally to the number of months remaining until the next year, within 15 days starting from the validity period of the rights of use;
  - moreover, the operator pays the whole unique fee for the year to come on 15 December at the latest. If the rights of use expire in the course of the year to come, the operator pays proportionally to the number of months remaining until the rights of use expire;

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<sup>16</sup> Article 3 of the Act of 22 April 1999 on Belgium's exclusive economic zone in the North Sea.

<sup>17</sup> Preferential physical-layer Cell Identities, see annex 5 of the CEPT recommendation ECC 11(05) (Cross-border Coordination for Mobile/Fixed Communications Networks (MFCN) in the frequency band 2500-2690 MHz).

<sup>18</sup> The date of the notification of the rights of use referred to in Article 35, §2, of the Royal Decree on 2600 MHz.

- the legal interest rate is applicable as from the 16th day following the start of the validity period of the rights of use;
  - the operator pays the interest on the outstanding amount, simultaneously with the unique fee.
63. An operator who chooses to pay by annual instalments can, on each 15 November at the latest, notify BIPT of its will to free itself with a one-time payment of the balance of the unique fee. In that case, the operator will pay the balance, on 15 December of that year at the latest, based on a settlement drawn up by BIPT.

### **3.7. Annual fees**

64. Operators will also be required to pay the following annual fees to BIPT:
- Fee related to the notification as an operator (see section 5.4);
  - Annual frequency availability fees;
  - Annual fees for the use of numbers (see section 5.8).
65. The annual frequency availability fees for the 2.6 GHz band, that are valid for the year 2020, amount to 31,200 EUR per MHz. These amount is adapted each year to the consumer price index.
66. Currently, the annual fees are only due for frequencies that are effectively in use. However, it should be noted that the Royal Decree on 2600 MHz should be amended shortly so that annual fees are due for all assigned frequencies, used or not.

## Chapter 4. Organisation of the assignment procedure

### 4.1. General

67. BIPT will manage the day-to-day running of the auction. Communications in relation to the auction should be made to BIPT.
68. BIPT has the power to take all necessary measures for the smooth course and practical organisation of the procedure to grant rights of use.
69. Specifically, BIPT can establish any infringement that may lead to the nullity of the bid or the exclusion from the procedure.
70. The rules that apply from the submission of the applications until the granting of rights of use are described in the Royal Decree on 2600 MHz and the candidates should refer to it. To make the rules easier to understand, BIPT gives the following summary. However, only the rules mentioned in the Royal Decree are valid and obligatory. In case of any contradiction, the Royal Decree shall prevail over this memorandum.

### 4.2. Spectrum cap

71. The spectrum cap represents the maximum quantity of spectrum that may be held by a relevant group<sup>19</sup>.
72. The spectrum cap is set at 20 MHz duplex. A relevant group cannot acquire more than 20 MHz duplex in the 2500-2570 and 2620-2690 MHz frequency bands. The spectrum that is already held by existing operators (see section 2.5) must be taken into account. As a consequence, Proximus, Orange and Telenet cannot take part in the procedure. The participation of Dense air Belgium is however possible.

### 4.3. Application files

73. BIPT published a call for tenders in the Moniteur belge and on BIPT's website on 20 February 2020. The last date of submission of the applications was initially scheduled for 23 March 2020 but has been postponed to 15 May 2020, 10 a.m. at the latest (see publication in the Moniteur belge of 23 March 2020).
74. The call for tenders contains an application form and guidelines regarding the content and the submission of applications.

### 4.4. Relevant groups

75. The Royal Decree on 2600 MHz gives definitions of "control with regard to a person"<sup>20</sup> and "relevant group"<sup>21</sup>.

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<sup>19</sup> See section 4.4.

<sup>20</sup> The legal or factual power to decisively influence the appointment of a majority of directors or general managers of this person, or the orientation of its management. The control can be exercised exclusively or jointly, directly or through an intermediary and will be interpreted in accordance with Articles 1:14 to 1:18 of the Companies and Associations Code, Part 1, Book 1, Title 4, Chapter 1, it being understood that where it is referred to a majority, it will consist of 50% or more. (free translation)

<sup>21</sup> With regard to a person (the "first person"):

- a) the first person, and;
- b) any person who is controlled by the first person, and;
- c) any person (the "second person") who controls the first person, and;
- d) any person who is controlled by the second person, and;

76. If several applicants to the same procedure are part of the same relevant group in relation to a candidate, then only one shall be allowed to participate in the procedure. The candidates involved shall choose from their midst, at BIPT's request, the person who will participate in the procedure. When no choice is made, all candidates involved will be excluded from the procedure.
77. Candidates are required to notify BIPT of any change or any proposed change to their relevant group of which they are or will be part or of which they become aware following the submission of their applications. If a change occurs, causing various candidates to belong to the same relevant group, a selection will have to be made among the candidates who are members of the same relevant group, in order to keep only one candidate. If not, all candidates concerned will be excluded from the rest of the procedure.

#### 4.5. Deposits

78. Candidates must submit a deposit of 1 million EUR as part of their application to the assignment procedure. Failure to provide this deposit will automatically lead to the inadmissibility of the application.
79. The deposit is to be paid into the account of the Belgian State at the National Bank of Belgium no later than on the date and time set by BIPT for submitting the application and published in the Belgian Official Gazette.
80. Transfer commissions and all other costs or taxes incurred in transferring funds to the account shall be borne by the party making the transfer. Candidates should make sure that funds are received net of any commission.

##### 4.5.1. Deposit interest

81. The deposit will yield an interest at the interest rate of the deposit facility of the European Central Bank. This interest rate can be negative. This interest will be calculated on a daily basis, and will be compounded on the last working day of the TARGET payment system of each month.
82. The funds will earn interest from the day of transfer, provided they have been paid into the account of the National Bank before the TARGET cut-off-time for clearing. The funds will earn interest up to the day prior to their refund.

##### 4.5.2. Ratcheting the deposit

83. During the submission of bids, the corresponding deposit will have to be increased each time the total amount of the bids exceeds established thresholds (see Table 5).

Total amount of the bids	Deposit threshold
≤ 50 million EUR	1 million EUR
>50 million EUR and ≤ 100 million EUR	3.5 million EUR
>100 million EUR and ≤ 150 million EUR	6 million EUR
>Nx50 million EUR and ≤ (N+1)x50 million EUR	1+Nx2.5 million EUR

**Table 5 : Amount of the deposits depending on the bids**

84. As stated above, bids made without ratcheting the deposit are null and void.
85. Candidates are allowed to pay the amounts of extra deposit well in advance before they reach the corresponding threshold of the bid.

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e) any person with whom one of the persons referred to under a) to c) forms a consortium as defined in Article 1:19 of the Companies and Associations Code, Part 1, Book 1, Title 4, Chapter 1. (free translation)

86. The candidates shall send BIPT proof of the higher deposit before making the bid that gives rise to the higher deposit.
87. All information relating to the deposits will be kept strictly confidential. Information on the balance of the deposit, including the interest accrued, will be provided upon request. Bidders can only request information about their own deposits. As set out above, all deposit amounts will attract interest at the rate of the deposit facility of the European Central Bank. This interest rate can be negative. The interest will be compounded on the last working day of the European TARGET payment system of each month.

#### **4.5.3. Possible repayment of the deposit**

88. Deposits, including interests, will be repaid to candidates who have not been granted rights of use.

#### **4.6. Admissibility**

89. In order to be admitted to the auction, candidates have to satisfy the following requirements:
  - the application must be submitted between 9 a.m. and 5 p.m. during working days and on the date and time determined by BIPT, at the latest;
  - the application has to be submitted to BIPT against delivery of a receipt, in two copies, with indication of an original copy signed by the candidate's competent representative(s);
  - the deposit must be paid unconditionally and irrevocably in cleared funds in euros ultimately at the moment of submitting the application. It is paid for the benefit of the Belgian State at the National Bank of Belgium into an account, the number of which will be communicated at a later stage;
  - the application must be complete, providing all requested information in the correct form;
  - the application must be submitted by a corporate body, which must not be in a state of liquidation or bankruptcy, has not filed for bankruptcy and is not involved in a liquidation procedure or judicial concordat, and is not involved in a similar situation or process.
90. The application must be in French, Dutch or German.
91. After being submitted the applications cannot be modified.
92. If several candidates are part of the same relevant group, BIPT will ask the candidates concerned to make a choice within the relevant group. If no choice is made, all candidates involved will be excluded from the procedure.
93. Once the admissibility of the applications has been decided upon, the candidates will be informed of the identity of all the eligible candidates.

#### **4.7. Course of the procedure**

##### **4.7.1. General**

94. This section offers an overview of the format of the auction. The detailed auction rules will be published afterwards on BIPT's website.

##### **4.7.2. Electronic tendering system**

95. The auction is ensured via an electronic tendering system, enabling candidates to bid safely over the public Internet.

96. Eligible candidates will be able to connect to the system via the public Internet by using a standard web browser (e.g. Internet Explorer or Firefox). To that end, eligible candidate must have a high quality and reliable Internet connection and use a computer with a compatible web browser. It should not be necessary to install another specialised piece of hardware or software to participate in the auction. The appropriate security measures will be applied to ensure the system integrity and to maintain the confidentiality of the bids.
97. The bidding interface of the electronic tendering system will provide real-time information on the status and progress of the auction, including a timetable of the rounds, the bidding forms and the reports over the results of the rounds.
98. Eligible candidates will be provided with a guide before the start of the auction. This guide will contain all the relevant information over the electronic tendering system, including the hardware and software requirements, the login instructions and the terms of use of the bidding interface. A training session as well as a test auction will also be organised for eligible candidates shortly before the start of the actual auction.

#### **4.7.3. Disruption to the auction**

99. Any behaviour or communication that disrupts the smooth course of the auction procedure is forbidden.

#### **4.7.4. Collusion**

100. The candidates shall not exchange confidential information with other candidates, on penalty of being excluded. Neither shall they make any form of agreement with other candidates or perform any act which could impact the result of the process or affect competition during the auction.
101. When such a breach is established BIPT shall submit a complaint to the competition authorities and go to court submitting the complaint to the examining magistrate. BIPT shall exclude these candidates from the procedure in any case.

#### **4.7.5. Ascending multi-round auction**

102. During the auction procedure, candidates can bid during each round for the single lot.
103. The auction will be organised as an ascending auction with multiple rounds. This format allows candidates to make offers, in response to ascending prices, during successive rounds.
104. The auctioned single lot is detailed in section 3.1.
105. Each candidate can bid for this lot during a round. By bidding, the candidate indicates that it wishes to buy the single lot at the price it chooses within a range announced by the tendering system. A bid is binding and cannot be cancelled.
106. Article 30 of the ECA determines the minimum bid for the auction, which will be, after having been rounded upward to the nearest 10,000 EUR, the minimum price of the single lot during the first bidding round of the auction (see section 3.6).
107. A candidate holding the highest bid for the single lot cannot make a new bid during the following round for this lot, nor can withdraw from the auction, unless another candidate has made a higher bid for this lot. Unless another candidate outbids the offer that has been made for this lot, the candidate will acquire the single lot, at the end of the auction, at the price subject to the payment of a unique fee equivalent to its highest offer.
108. During each round, a candidate can:
  - bid;
  - use a waiver;
  - withdraw from the auction.

### Bids

109. The bids cannot be lower than the minimum amount set by BIPT for the round. The bids cannot be higher than the maximum amount set by BIPT for the round.

110. Each bid must be a multiple of 10,000 EUR.

### Withdrawal from the auction

111. A candidate who does not hold the highest bid for the block may formally withdraw from the auction. A candidate who has withdrawn is not allowed to rejoin the auction at a later stage.

112. Withdrawing from the auction can be implicit. A candidate who has not made a bid and has not used its waiver is considered as having withdrawn from the auction if the candidate could not use a waiver (if the candidate still had a waiver, it is considered as having used this waiver).

### Waivers

113. A candidate who would otherwise be required to bid or withdraw from the auction may also exercise one of its waivers, allowing it to take no action in that specific round without being deemed to have withdrawn from the auction.

114. Using the waiver can be implicit. A candidate who has not made a bid and who has not withdrawn from the auction is considered as having used a waiver if the candidate could do it.

115. Only a candidate who is not holding the highest bid for the single lot is allowed to use a waiver as an alternative to bidding. Each candidate can use a waiver for a maximum of three rounds.

116. At the end of each round, the auction system will communicate to all participants the information on the activity during the closed round as well as the parameters for the next round. Candidates are provided with the following information:

- Start and stop time of the next round;
- The amount of the highest regular bid for the single lot;
- The identity of the candidate holding the highest regular bid for the single lot;
- The amount of the minimum bid for the next round for the single lot;
- The amount of the maximum bid for the next round for the single lot;
- The identity of the candidates who have withdrawn from the auction;
- The identity of the candidates who have used a waiver;
- The identity of the candidates who have been excluded from the auction;

117. The last round of the auction is the round during which no new bid is made and no waiver is used.

118. At the end of the final round, the tendering system will communicate to each successful candidate the amount of the highest regular bid as well as the identity of the candidate holding that bid.

#### **4.7.6. Granting of rights of use**

119. BIPT will formally notify the successful candidate of the granting of his rights of use, and confirm the unique fee due. The unique fee this candidate has to pay amounts to the highest bid for the single lot.

120. The amount of the deposit and accrued interest will be set off against the unique fee due. Non-payment or late or incomplete payment of the balance of the unique fee shall entail withdrawal of the rights of use.

121. Instructions for the payment of the balance will be sent in due course to the successful candidates.

## Chapter 5. Regulatory issues

### 5.1. Obligations

122. Operators are subject to certain obligations resulting from the regulatory framework regarding electronic communications, including, without being complete:

- cooperation with security and emergency services;
- cooperation with telephone directory publishers;
- provision to BIPT of the standard contract(s) concluded with end-users;
- publication on their websites of the general terms and conditions;
- adoption of appropriate technical and organisational measures in order to ensure service security;
- provision of tariff information to BIPT;
- provision upon request of detailed and precise billing information to end-users;
- collaboration with the Office of the Ombudsman;
- obligations with regard to privacy and data protection;
- publication of technical details regarding interfaces;
- publication of adequate and up-to-date information regarding access for end-users to services and to the network;
- obligations with regard to interconnection.

### 5.2. Modification of the rights of use

123. Rights of use cannot be modified but in objectively justified cases and in a proportionate manner. The intended modification will first be submitted to the sector. The European regulatory framework<sup>22</sup> lays down that interested parties, including users and consumers, should be allowed a sufficient period of time to express their views on the proposed amendments.

### 5.3. Breach and revocation

124. If BIPT establishes that the 2600 MHz operator is not complying with the conditions for the exercise of the rights of use awarded to the operator, or does not act in compliance with the Acts and regulations the observance of which is monitored by BIPT (including the ECA and the Royal Decree on 2600 MHz) or with the decisions taken by BIPT, the latter may order the operator to remedy that situation, either immediately or within the period it allows, and impose an administrative fine in accordance with Article 21, §§ 1 to 5, of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors (hereafter the "BIPT Act"). If the 2600 MHz operator is still in breach, BIPT may again impose an administrative fine on the 2600 MHz operator (Article 21, § 6, of the BIPT Act).

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<sup>22</sup> Article 14.1 of directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) and Article 18 of directive 2018/1972/EU of the European Parliament and of the Council 11 December 2018 establishing the European Electronic Communications Code (Recast).

125. Article 21, § 7, of the BIPT Act adds that if the breach is serious or repeated and the measures taken have not remedied the breach, BIPT may suspend or revoke the granted rights of use, or order the operation of the network or the provision of the service involved, as well as the marketing or use of any service or product concerned to be suspended entirely or partly.

#### **5.4. Notification under Article 9 of the ECA**

126. A candidate who has already made a notification, according to Article 9 of the ECA, shall include the proof of it in the offer.

127. A candidate who has not yet made such a notification has to include the completed notification form in its application. Besides the unique fee due for the registration, BIPT charges an annual monitoring fee. The candidate must pay the unique registration fee to BIPT by bank transfer only, but the annual costs will only be charged if this candidate is granted the rights of use after the auction.

#### **5.5. Antenna sites**

##### **5.5.1. Town planning permit and environmental exposure limits**

128. For the creation of sites and the installation of antennas there may be a requirement to hold a urban planning permit for that site. On the one hand, the Regions, i.e. the Brussels Capital Region, the Flemish Region and the Walloon Region are competent for town planning permits. On the other hand, it is possible that an additional municipal regulation is in force. More information on town planning requirements has to be requested from the respective Regions and municipalities.

129. Site construction also requires certificates proving that the regional regulation on observing maximum exposure limits regarding electromagnetic radiation is complied with. These certificates have to be requested from the respective Regions.

130. Some information is given here about the current situation in the three Regions.

131. BIPT has no competence in this matter. It cannot be held accountable in case the authorisations or permits required by the Regions are refused, nor when the exposure limits are exceeded.

##### Situation in the Brussels Capital Region

132. The ordinance of 1 March 2007 on the protection of the environment against any harmful effects and nuisance caused by non-ionising radiation sets a cumulative limit of  $0.096 \text{ W/m}^2$  (i.e. about  $6 \text{ V/m}$ ) at a frequency of 900 MHz, in the areas accessible to the public. This limit varies depending on the frequency:

- $0.043 \text{ W/m}^2$  for frequencies between 0.1 and 400 MHz;
- $f/9375$  in  $\text{W/m}^2$  between 400 MHz and 2 GHz, where  $f$  represents the frequency in MHz;
- $0.22 \text{ W/m}^2$  for frequencies between 2 GHz and 300 GHz.

133. According to the Decree of the Government of the Brussels Capital Region of 30 October 2009 on certain antennas emitting electromagnetic waves, all the antennas of an operator shall not exceed 33% of the cumulative limit.

134. The Decree of the Government of the Brussels Capital Region of 8 October 2009 laying down the methodology and terms for measuring the electromagnetic field emitted by some antennas as well as the Ministerial Order of 30 June 2010 concerning the validation of a simulation tool calculating the electric field emitted by an antenna emitting electromagnetic waves also apply.

135. The applications for environmental permits are processed by Bruxelles Environnement/Leefmilieu Brussel, the institute for environment and energy management in the Brussels Capital Region. In addition, operators have to communicate to Bruxelles Environnement/Leefmilieu Brussel certain technical features of their installations.

136. Moreover, the installation of an antenna requires in principle a town planning permit issued by the regional administration. However, a Ministerial Order of 13 November 2008 lays down exceptions to that principle.

#### Situation in the Flemish Region

137. The Decree of the Flemish Government of 1 June 1995 laying down the general and sector-bound provisions regarding environmental hygiene (VLAREM II) sets a cumulative limit of 20.58V/m at 900 MHz, for all the areas that are accessible to the public. This limit varies depending on the frequency:

- 13.7 V/m for frequencies between 10 and 400 MHz;
- $0.686 \sqrt{f}$  expressed in V/m between 400 MHz and 2 GHz, where  $f$  represents the frequency in MHz;
- 30.7 V/m for frequencies between 2 GHz and 10 GHz.

138. Pursuant to the Decree of the Flemish Government of 1 June 1995, each antenna<sup>23</sup> of an operator cannot exceed 3V/m at 900 MHz, which corresponds to 2.125%<sup>24</sup> of the cumulative limit.

139. In practice<sup>25</sup>, the limit per antenna is always the most restrictive.

140. A conformity certificate is necessary for each operation and modification of a stationary transmitting antenna, proving that the standard is observed. Applications are handled by the *Departement Leefmilieu, Natuur en Energie*.

141. In addition, the Flemish town and country planning code requires in principle the issue of a urban planning permit to erect a transmitting antenna. That permit is issued by the Flemish authority. However, the code allows for a number of exceptions to that principle.

#### Situation in the Walloon Region

142. The Decree of 3 April 2009 on the protection against any harmful effects and nuisance caused by non-ionising radiation generated by stationary transmitting antennas lays down a limit of 3V/m for each antenna<sup>26</sup> of an operator, regardless of the frequency.

143. An application is to be submitted for each installation to the Scientific Institute for Public Services (Institut Scientifique de Service Public - ISSeP).

144. Stationary transmitting antennas below 500 kW and the maximum EIRP of which is higher than 4 W are also subject to prior declaration within the meaning of the Decree of 11 March 1999 on the environmental permit proving observance of the standard. The declaration is sent to the municipal council of the municipality on the territory of which the facility is situated. Antennas over 500 kW are subject to the environmental permit.

145. In addition, in principle, the *Code wallon de l'aménagement du territoire, de l'urbanisme, du patrimoine et de l'énergie* ("CWATUPE") requires a urban planning permit to erect a transmitting antenna. That permit is issued by the delegated civil servant or the Walloon Government. However, the CWATUPE allows for a number of exceptions to that principle.

### **5.5.2. Site sharing**

146. The Government has decided to promote the sharing of antenna sites, and has included measures to this end in the ECA. Site sharing is defined by Articles 25 to 27.

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<sup>23</sup> Concerning the Flemish Region, it must be borne in mind that there is an antenna per deployed technology and per frequency band.

<sup>24</sup>  $(3/20.58)^2$ .

<sup>25</sup> Up to 47 antennas.

<sup>26</sup> Concerning the Walloon Region, it must be borne in mind that there is an antenna per deployed technology.

147. The main obligations relating to site sharing are the following:

Obligation to use pre-existing supports

148. The operator shall make every effort to install, to the extent possible, its antennas on pre-existing supports, such as building roofs, pylons, façades; this list is not exhaustive.

Obligation to share sites

149. Operators shall take the necessary measures so that the stability and the height of the masts on the antenna sites they are building, as well as other parts of antenna sites, have built or modified are suitable for the shared use with other operators who asked for it, except when it is not possible due to reasons acknowledged by BIPT. BIPT may impose the shared use, taking account of the principle of proportionality. An operator who owns a support structure shall authorise in a reasonable and non-discriminatory way the shared use of the antenna site. If adjacent premises are owned by an operator and offer the possibility to install equipment of the different operators in separate rooms, this operator shall allow the requesting operator to make use of this possibility to install its base station.

150. When an operator uses a site (partially) owned by a third party, the operator operating this site or using it on a shared basis shall not oppose to the conclusion of an agreement between the owner and another operator, allowing the latter to use the site in question on a shared basis. Any clause which would prohibit or make the shared use of the site in question more difficult for one or several other operators, including any clause aiming at imposing a condition of reciprocity, of any kind, is null.

151. The fee for site sharing consists of the total cost, i.e. the direct costs for acquiring the site, and the actual construction and maintenance costs to which a percentage is added equal to the weighted average capital costs of the operator who offers site sharing.

152. If the site sharing entails enhancement works, the costs of these works are borne by the operators causing them, based on an agreement, the terms of which are reasonable, proportionate and non-discriminatory.

Obligation to cooperate concerning urban planning permits

153. At least one month before submitting an application for an urban planning permit to the competent authority regarding a certain antenna site or a substantial part of a site regarding shared use, each operator shall inform all the other operators and BIPT of its intention. If appropriate, the operator must, before submitting the application for an urban planning permit, negotiate the technical and financial conditions of the shared use of the antenna site in question with the other operators and to conclude an agreement, the terms of which are reasonable, proportionate and non-discriminatory. In the month following the notification, the other operators send the first operator their intention of shared use of the antenna site concerned or a part of it. The application for an urban planning permit is adapted, if necessary, to the shared use and submitted by the operators who will use the site.

Obligation to contribute to a database

154. A database containing all the antenna sites has been created and includes all relevant information in order to facilitate the assessment of sites in view of their shared use. Operators must collaborate to the creation and the use of the antenna sites database.

155. The costs relating to that database are borne by the operators concerned, according to an agreement negotiated between them or, if not, are set by BIPT.

## 5.6. Infrastructure and spectrum sharing

156. Mobile infrastructure and more specifically the shared use of the radio access network (RAN) become an important issue, which mobile network operators evaluate and consider in their expansion projects and investment decisions.
157. In that context, with a view to ensuring total transparency for all market players BIPT had published a communication<sup>27</sup> in 2012 in order to clarify the main concepts associated with the shared use of mobile infrastructure, to explain the pros and cons involved, to give guidelines and to explain BIPT's expectations as to the operators' conduct on the Belgian market.
158. The draft amendment to the Royal Decree on 2600 MHz lays down that BIPT can authorise operators to share their spectrum, provided that that shared use does not harm competition. Obviously, this possibility did not exist in 2012 when BIPT had published the above-mentioned communication.
159. In 2017, BIPT appointed an external consultant to study infrastructure and spectrum sharing. The study was carried out by IDATE and led to the report "Infrastructure and spectrum sharing". The report has been published<sup>28</sup> by BIPT.

## 5.7. Spectrum hoarding

160. Article 19/1 of the ECA provides that BIPT must set rules to prevent spectrum hoarding, especially by setting strict deadlines for the actual implementation of rights of use by their holders and by applying sanctions. BIPT organised a public consultation on 14 January 2014. Following that consultation, BIPT published the Communication of 28 April 2014 *concerning spectrum hoarding*.

## 5.8. Numbering

161. Operators use numbers to provide their services. Appropriate numbers will be selected in accordance with the numbering plan for the type of service concerned and the applicable tariff principles (<https://www.bipt.be/en/operators/telecommunication/Numbering>).
162. A numbering capacity of types E.164, E212, ISPC, NSPC, SMS... can be requested in accordance with the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights. This decree lays down several general principles, explains several procedures and determines who can obtain and exercise which rights of use for what type of numbers.
163. According to the service features (value-added services, premium rate numbers, broadband video, etc.), BIPT can assign numbers in accordance with the Royal Decree of 27 April 2007.
164. Classical mobile phone services use E.164 numbers starting with service identity 4 (after prefix "0") where the second digit (i.e. after "4") cannot be "2" or "3". These numbers currently consist of 9 digits ("0" not included) to reach end-users. The numbering capacity available behind this service identity can be reserved individually in series of 100,000 numbers.
165. For each series of 100,000 mobile numbers starting with service identity "4", a one-off application fee of 1,270 EUR is charged (file charges) as well as an annual user fee of 1,904 EUR. These amounts are related to the year 2020 and are adapted annually to the inflation rate.
166. Since 1 September 2013 a special number series (077) for M2M communications is operational<sup>29</sup>.

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<sup>27</sup> BIPT Communication of 17 January 2012 containing guidelines for infrastructure sharing.

<sup>28</sup> BIPT Communication of 26 July 2018 on infrastructure and spectrum sharing.

<sup>29</sup> See the BIPT Council Decision of 4 September 2012 amending the Decision of the BIPT Council of 6 September 2011 on the determination of the numbering plan for M2M communication and the BIPT Council Decision of 6 September 2011 on the determination of the numbering plan for M2M communication.

## 5.9. International Mobile Subscriber Identity Number

167. According to Article 75 of the Royal Decree of 27 April 2007 on managing the national numbering space and the grant and withdrawal of number user rights, BIPT issues the two-digit mobile network codes that follow the mobile country code to operators who own a network or network elements for roaming applications. The mobile network codes are followed by a ten-digit number. The international identification plan for equipment and users in roaming situation has been laid down by the International Telecommunication Union in Recommendation E.212. The mobile country code assigned to Belgium by the International Telecommunication Union is "206". The International Mobile Subscriber Identity (IMSI) consists of the country code followed by the network code and 10 digits and is required to enable a "visited network" to identify the "roaming" terminal equipment.
168. The administrative fee per mobile network code amounts to 1,270 EUR and the annual user fee to 15,867 EUR. These amounts are related to the year 2020 and are adapted annually to the inflation rate.

## 5.10. Number portability

169. Number portability is a facility that must be provided (the technical specifications are available on the BIPT website) via the central reference database for number portability.
170. Mobile number portability is laid down by the Royal Decree of 2 July 2013 on the number portability for electronic communications services subscribers.
171. In Belgium, operators are under the obligation to make use of the central reference database (CRDB) for number portability. It is run by a non-profit-making association the membership of which is open to all operators who are obliged to offer number portability. The CRDB is an intermediating platform through which all operational processes for porting a number take place, thus spreading routing information. The costs for using the CRDB have to be borne by the operators and their distribution is organised in the royal decrees mentioned above.
172. Here are the contact details:

Agoria ICT	Karla De Paepe Diamant Building Boulevard A. Reyers 80 1030 Brussels Tel: +32 (0)2 706 81 26 Fax: +32 (0)2 706 80 09 E-mail: <a href="mailto:info@crdc.be">info@crdc.be</a>	Secretariat of the NPA Board
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173. The schedule of the number porting process is currently organised by Article 10 of the Royal Decree.
174. As to sharing the CRDB costs the following rules apply to operators who have numbers at their disposal. Operators who offer number portability, whether or not they are members of the non-profit-making association for number portability in Belgium, assume together all of the central reference database annual cost remaining after deducting:
- 1° the fees paid by the users of the graphic interface porting fewer than 500 numbers per calendar year;
  - 2° the fees paid for consulting or accessing the central reference database within the framework of the routing information service;

3° indemnities for other services provided by the non-profit organisation, authorised by BIPT.

175. Users of the graphic interface of the central reference database porting fewer than 500 numbers per calendar year pay a fee consisting only of the unique connection fee of 500 EUR and 5 EUR per ported number. These users do not have to pay any contribution to the annual fee as mentioned in subparagraph 4 and to the porting cost as laid down in subparagraph 5 of that paragraph.
176. A monthly indemnity of 200 EUR is charged to each customer of the routing information service. The unique connection fee amounts to 10,000 EUR.
177. To cover the remaining portion of the annual costs, the following costs are charged per month, per user, and this per connection to the central reference database:
  - 1° 300 EUR for the graphic interface for users porting at least 500 numbers per year;
  - 2° 400 EUR for the semi-automatic interface;
  - 3° 600 EUR for the fully automatic interface.
178. The unique connection fee or the switching fee between the different types of connection described in points 1°, 2° and 3° amounts to 500 EUR.
179. The routing information service is included in the costs charged to the users referred to in subparagraph 4.
180. The remaining portion of the annual costs after deducting the indemnities listed in the previous subparagraphs is charged to each operator in proportion to the sum of numbers it has ported as a donor operator and of numbers that have been ported to it as a receiver operator during the past calendar year.
181. The quantity of numbers which can be ported in a certain period is limited. As guide value for the maximum processing capacity for the CRDC, 4,320 execution messages (execs) per operator per day must be considered. However, there is a second more limiting factor, i.e. all operators (including fixed operators) must update their routing information in case of a number porting, experience showing us that maximum 150,000 number portings can be processed per month. For your information, in the last few years, about 100,000 were ported each month on average.

### **5.11. Data retention**

182. Under Article 126 of the ECA, as replaced by the Act of 29 May 2016 on data collection and retention in the electronic communications sector, operators must retain the data aiming at identifying the subscriber or user and the means of communication, the data related to the access and connection of the terminal equipment to the network and service and related to the location of this equipment and the communication data (except for the content), generated or processed by them in connection with the provision of the concerned communications services. The data to be retained are specified in the Royal Decree of 19 September 2013<sup>30</sup>.
183. Furthermore, operators delete traffic data relating to subscribers or end-users from their traffic data or make these data anonymous, as soon as they are no longer needed for the transmission of the communication (Article 122, § 1, of the ECA). However, the billing data can be processed and stored provided that the person to whom they relate has been informed (Article 122, § 2). The traffic data may be processed for marketing purposes under the terms laid down in Article 122, § 3, of the ECA.

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<sup>30</sup> Royal Decree of 19 September 2013 implementing Article 126 of the Act of 13 June 2005 on electronic communications.

184. Mobile network operators are only allowed to process location data regarding subscribers or end-users if they have been made anonymous or when the processing is appropriate within the framework of the provision of a service with traffic or location data. This processing is subject to a number of terms laid down in Article 123 of the ECA.

## **5.12. Facilitation of the identification and legal interception**

185. Pursuant to Article 127 of the ECA, operators cannot provide a service or equipment making it difficult or impossible to identify the final user, to detect, locate, tap, take notice of and record private communications.

186. Operators must observe the following two Royal Decrees, adopted on the basis of that Article 127 among others:

- Royal Decree of 9 January 2003 determining the conditions of the legal collaboration obligation in case of judicial requests on electronic communications;
- Royal Decree of 12 October 2010 determining the conditions of the legal collaboration obligation in case of judicial requests on electronic communications by the intelligence and security services;
- Royal Decree of 27 November 2016 on the identification of the end-user of mobile public electronic communications services provided by means of a prepaid card.

187. This document is without prejudice to operator's obligations under the Code of Criminal Procedure or the Organisation Act of 30 November 1998 of the intelligence and security services.

## **5.13. MTR tariffs**

188. The regulation of the wholesale tariffs for voice call termination of any new mobile network operators in Belgium on their mobile networks will be the subject, in due course, of appropriate supplementary BIPT decisions within the framework of the market 2 listed in the Commission Recommendation of 9 October 2014<sup>31</sup>.

189. However, subject to the outcome of the new specific market analysis to be conducted on this occasion, SMP operators are already subject to a cost orientation principle of an efficient operator, by virtue of the BIPT Council Decision of 26 May 2017 for the regulation of market 2<sup>32</sup>. The new decisions to be taken for the new mobile operators could lead to the same obligation.

190. For your information, mobile operators currently active in Belgium have to fulfil the following obligations:

- access and interconnection;
- non-discrimination;
- transparency;
- price monitoring and cost accounting system.

191. Further details on these obligations can be found in the Decision of 26 May 2017, on BIPT's website.

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<sup>31</sup> Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services.

<sup>32</sup> BIPT Council Decision of 26 May 2017 on the analysis of market 2: voice call termination on individual mobile networks.

192. However, as to price monitoring, it may be useful to mention the maximum termination rates imposed on all the mobile operators who have been active since 1 July 2017 (see Table 6).

Year	2017	2018	2019	Average
"Pure LRIC" MTR (€/minute)	0.98	0.99	1.00	0.99
Decrease compared to the MTR tariff of 2013	-17%	16%	15%	16%

**Table 6 : Maximum (nominal) termination rates**

#### 5.14. Obligations regarding the social element of the universal service

193. Pursuant to Article 74 of the ECA, any operator who provides consumers with a public electronic communications service and whose turnover related to public electronic communications services exceeds fifty million euros must offer to certain categories of persons, specified in Article 22 of the annex to the ECA, specific tariff conditions (defined in Article 38 of the annex to the ECA). This is the social element of the universal service or the social tariffs. Other operators willing to provide the social element of the universal service as well can do so if they notify BIPT<sup>33</sup> under the obligation to provide these social tariffs for a 5-year period.

194. However, no mandatory social tariff is currently applied to mobile services, only on fixed Internet and fixed telephony. Operators may, however, offer it on a commercial basis. On 11 June 2015, the Court of Justice of the European Union ruled in case C-1/14 that a mobile social tariff is not part of the universal electronic communications service as defined in Directive 2002/22/EC.<sup>34</sup> Following this judgement, the Constitutional Court, in its judgement nr. 15/2016 of 3 February 2016, repealed Article 51 of the Act of 10 July 2012, in so far as it concerns operators for their mobile communication services and mobile Internet subscriptions in the compensation system for the social element of the universal service. As a consequence, telecom operators cannot be obliged to offer a social tariff for mobile telephony or mobile Internet financed via a compensation fund, as it is currently the case in the national legislation.

195. Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code does provide for the possibility, however, to impose a mobile social tariff, i.e. when a Member State deems this necessary in order to guarantee the consumer's full participation in society, both on a social and on an economic level. From 6 December 2019 to 17 February 2020, the BIPT organised a consultation on the draft bill pertaining to the transposition of the European Electronic Communications Code and amending various provisions regarding electronic communications. The draft bill submitted for consultation does, however, restrict the social tariff to fixed telephony and fixed Internet.

196. The procedure for the submission and treatment of applications for the granting of social telephone tariffs is defined in the Royal Decree of 20 July 2006 establishing the operating conditions of the social element of the universal service regarding electronic communications. Each person who fulfils the conditions to obtain the social tariff and who wishes it must submit an application to the operator of his/her choice. The conditions are then examined via the database created by BIPT.

<sup>33</sup> The terms and conditions are laid down in the Royal Decree of 4 March 2013 on the content and terms of the notification regarding the voluntary provision of the social element of the universal service (Belgian Official Gazette of 29/03/2013).

<sup>34</sup> However, it should be noted that the Directive of the European Parliament and of the Council establishing the European Electronic Communications Code published in the Official Journal of the European Union of 17 December 2018 allows to introduce a mobile social tariff. Member States have two years to transpose it into national law.

## 5.15. Funding of the universal service

197. The ECA provides for two separate funds for the funding of the universal service. One is intended to cover the social element of the universal service, and the other the remaining elements of the universal service, this means only the fixed geographical element, having regard to the BIPT Council Decision of 6 May 2013 on the abolition of universal service obligations regarding the provision of public pay phones and other access points to public voice telephony services<sup>35</sup> and the Royal Decree of 15 December 2013 on the lifting of the universal service obligations concerning the directory enquiry service<sup>36</sup> and the universal directory<sup>37</sup>.
198. The fixed geographical element of the universal service consists in the provision at a fixed location across the whole territory of the basic public telephone service and a connection to a public communication network allowing end-users to have a functional Internet access. The speed of a functional Internet access is set to at least 1 Mbps, every day of the year, at any time of the day, except during a maximum period of one hour per day<sup>38</sup>.
199. However, it should be noted that since 1 August 2013 no operator has been appointed to provide the geographical element of the universal service<sup>39</sup>.
200. Furthermore, there is a separate mechanism to fund the database concerning the beneficiaries of social telephone tariffs.

### Funding of the universal service fund for social tariffs

201. The funding of the universal service fund for social tariffs is laid down in Article 74/1 of the LCE. Moreover, Article 45/1 of the annex to the ECA lays down the method to calculate the net cost of social tariffs.
202. The mechanism for the phased funding laid down in Article 74/1 added by the Act of 10 July 2012 pertaining to various provisions regarding electronic communications applies with retroactive effect from 30 June 2005. However, the draft bill transposing the European Electronic Communications Code and amending various provisions regarding electronic communication which was submitted for consultation to the sector at the end of 2019 contains a specific provision limiting in time claims about past situations. In particular, it is proposed to submit the request for compensation concerning the service provided during the period from 2005 to 2020 by BIPT by 31 December 2021 at the latest.
203. The current compensation mechanisms can be described as follows:
- BIPT considers in the first place whether or not the provision of the social element represents an unfair burden for a provider.
  - If this is not the case, there is no funding of the social element.

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<sup>35</sup> Decision of the BIPT Council of 6 May 2013 on the abolition of universal service obligations regarding the provision of public pay phones and other access points to public voice telephony services.

<sup>36</sup> Royal Decree of 15 December 2013 on the lifting of the universal service obligations concerning the provision of the universal directory enquiry service and the provision of the universal directory in the electronic communications sector (Official Gazette of 9/01/2014).

<sup>37</sup> Ministerial Order of 15 December 2013 on the lifting of the universal service obligations concerning the provision of the universal directory in the electronic communications sector.

<sup>38</sup> Royal Decree of 2 April 2014 on the specification of the speed level of functional Internet access for the provision of the geographical element of the universal service regarding electronic communications.

<sup>39</sup> It should also be referred to the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code. The directive lays down that the "adequate broadband Internet access service" is defined by the Member States in the light of national conditions, and taking account of the report to be drafted by BEREC. However, the adequate broadband Internet access service must be able to offer the necessary bandwidth to support at least the services listed in annex V of the European Code.

- If it is the case:
  - BIPT asks to each social tariff provider<sup>40</sup> to communicate the indexed amount of the estimated cost, calculated according to the method laid down in Article 45/1 of the annex. For a given year, the estimation made by the providers must be communicated by 1 August of the next year;
  - BIPT calculates and publishes the indexed net cost of each provider, based on the estimations given by the providers and in accordance with the calculation method of Article 45/1 of the annex. BIPT's calculations for the year concerned must be completed by 1 December of the next year.
  - BIPT subsequently assesses for each provider concerned if the calculated net cost really represents an unfair burden. This assessment is based on the specific characteristics of each provider (i.e. the level of the equipment, the economic and financial situation, the market share).
    - If it appears that the net cost does not represent an unfair burden for any of the providers, no compensation is due by the fund and the fund will not be fed.
    - If it appears that the net cost represents an unfair burden for at least one provider, BIPT, as the administrator of the fund, will see to the financing of the fund, through contributions paid by the providers of the social element, proportionate to their turnover regarding publicly available telephone services. The fund reimburses upon request each social tariff provider for which the provision of the social element represents an unfair burden. This compensation corresponds to the net cost borne by the operator.

204. The costs for managing the fund, including among other things the costs relating to modelling the providers' net costs, are financed by the operators providing the social element, in proportion to their turnover regarding publicly available telephone services. Yet, the maximum amount of the costs for managing the fund have to be laid down by the King, by a decree deliberated in the Council of Ministers.

#### Funding of the universal service fund other than the social element

205. The financing of the universal service fund other than the social element has been laid down in Articles 92 and following of the ECA. This fund is financed with contributions from the operators and is intended to pay back the providers of the universal service elements (excluding the social element), to the extent that BIPT has established that the net costs borne represent an unfair burden. The fund is given legal personality and is administered by BIPT. However, its management costs are financed by the operators during the current year (the mechanism for participating in the management costs therefore differs from the mechanism set up to finance the universal service operations).

206. Article 96 of the ECA defines the operators who must contribute to the fund. For a given year these are all the operators who have submitted a notification in accordance with Article 9 of the ECA on 1 September of the calendar year preceding the year in which the universal service operations have taken place.

207. The calculation of the operators' contribution is laid down in Articles 98 and 99 of the ECA.

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<sup>40</sup> However, the draft bill transposing the European Electronic Communications Code and amending various provisions regarding electronic communication which was submitted for consultation to the sector at the end of 2019 lays down that the obligation to communicate data and the actual calculation are limited to operators requesting compensation.

### Funding of the database of beneficiaries of the social telephone tariff

208. Apart from these two funds intended to finance the universal service operations, providers of social tariffs are currently obliged to participate in the funding of the database created at BIPT relating to the beneficiaries of the social telephone tariff. The funding is defined in Article 30, §§ 2-5, of the BIPT Act.
209. That Article lists the various means of BIPT. Examples are the repayment of the costs of investment and maintenance for the database as referred to in Article 22, § 2, of the annex to the ECA (§§ 2 and 3) and the costs relating to the installation and possible use of a computer system of the XML/batch flux type (§ 4).
210. The distribution of the investment and maintenance costs for the database is defined as follows:
- costs of investment
    - 10% borne by BIPT;
    - 10% in equal parts between the providers of social tariffs insofar as their turnover amounts to at least 1,240,000 EUR;
    - 40% borne by the providers of social tariffs proportionate to the number of social customers they have (expressed in days of social subscription, a concept combining the number of social subscribers with the actual length of the period in which each of them really has benefited from the social reductions);
    - 40% borne by the providers of social tariffs proportionate to the number of requests they have made in the system.
  - maintenance costs
    - 20% in equal parts between the providers of social tariffs insofar as their turnover amounts to at least 1,240,000 EUR;
    - 40% borne by the providers of social tariffs proportionate to the number of social clients they have;
    - 40 % borne by the providers of social tariffs proportionate to the number of requests they have made in the system.
211. As for the part of the costs proper to the XML/batch interface, only the operators who really are providers and the real users of that interface have to bear the specific costs thereof.
212. Paragraph 5 of Article 30 of the BIPT Act lays down that the reimbursement of the costs of investment and maintenance made after 31 December 2006 is subject to prior approval by way of a Royal Decree deliberated in the Council of Ministers.
213. This financing scheme of the investment and maintenance costs of the database of social tariff beneficiaries has been applied until now for the year 2006, pursuant to the BIPT Council Decision of 21 October 2011 on the methodology to allocate the costs related to the database of the social element of the universal telecommunications service and to the calculation elements specific to the year 2006<sup>41</sup>.

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<sup>41</sup> There was a previous BIPT Decision of 22 April 2009 concerning the years 2006 and 2007. That decision was then annulled by a judgement of the Brussels Court of Appeal of 7 September 2010 (2009/AR/1871) following an application for annulment brought by Belgacom and Belgacom Mobile.

214. Two decisions were then taken on 14 April 2013 based on Article 30, §5, of the BIPT Act, the first one approving the investments from 2007 to 2011<sup>42</sup>, and the second one approving the investments planned for 2012 and 2013<sup>43</sup>. An action for annulment of these decisions was brought before the Council of State. The latter found in its judgements 231.800 and 231.801 of 30 June 2015 that the current legislation implies that BIPT, before proceeding to investments related to the social tariffs database, must request the King's approval, and then only the investment and operating costs can be claimed from the social tariff providers. The Royal Decree of 14 April 2013 on the approval of the investments regarding the database referred to in Article 22, § 2, of the Annex to the Act of 13 June 2005 on electronic communications for the period of 1 January 2007 until 31 December 2011 was totally annulled, the Royal Decree of 14 April 2013 on the approval of the planned investments regarding the database referred to in Article 22, § 2, of the Annex to the Act of 13 June 2005 on electronic communications for the years 2012 and 2013 was partially annulled.
215. The draft bill transposing the European Electronic Communications Code and amending various provisions regarding electronic communication which was submitted to the sector by BIPT for consultation from 6 December 2019 to 17 February 2020 proposes, however, to delete Article 30, §§ 2-5, of the BIPT Act.

## **5.16. Funding of the Office of the Ombudsman**

216. Article 45bis of the Act of 21 March 1991 provides that companies subject to mediation (see below) have to fund the activities of the Office of the Ombudsman.
217. According to Article 43bis of the Act of 21 March 1991, the following companies are obliged to contribute to the financing of the Office of the Ombudsman:
1. any operator as referred to in the ECA;
  2. any person manufacturing, selling or distributing a directory as referred to in the ECA;
  3. any person providing a service of directory enquiries as referred to in the ECA;
  4. any person operating electronic communications systems as referred to in the ECA;
  5. any person providing public encryption services as referred to in the ECA;
  6. any person providing other electronic communications activities as referred to in the ECA;
  7. any provider of broadcasting and/or radio transmission services, provided that this concerns complaints of end-users about intermediary invoices, contractual provisions and the terms and conditions of the operator.
218. The amount of the due contribution is set each year by BIPT. It corresponds to the amount of the financial means necessary for the functioning of the Office of the Ombudsman, multiplied by a coefficient equal to each company's share in the turnover of all companies concerned recorded during the previous year for the activities falling within the scope of the Office of the Ombudsman, minus the first bracket of 1,240,000 EUR.

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<sup>42</sup> Royal Decree of 14 April 2013 on the approval of the investments regarding the database referred to in Article 22, § 2, of the Annex to the Act of 13 June 2005 on electronic communications for the period of 1 January 2007 until 31 December 2011 (Belgian Official Gazette of 23 May 2013).

<sup>43</sup> Royal Decree of 14 April 2013 on the approval of the planned investments regarding the database referred to in Article 22, § 2, of the Annex to the Act of 13 June 2005 on electronic communications for the years 2012 and 2013 (Belgian Official Gazette of 23 May 2013).

### **5.17. Spectrum trading**

219. Article 19 of the ECA allows an operator to transfer or lease its rights of use provided that this transfer or lease meets the requirements of an efficient and effective management of the radio frequency spectrum. This transfer or lease is subject to BIPT's approval. The terms of the transfer or lease are laid down in the Royal Decree of 26 February 2010 on the transfer of rights of use for radio frequencies that are used entirely or in part for publicly available electronic communications services.
220. The operator who transfers or leases its rights of use can transfer or lease them entirely or partially. The operator to whom rights of use are transferred shall observe the conditions required for obtaining and exercising these transferred rights of use. The lesser remains responsible for the observance of the conditions for obtaining and exercising the leased rights of use.
221. Any transfer or lease request requires the payment of a 500 EUR fee intended to cover the cost for examining the file. Within 6 weeks following the reception of the request, BIPT may request all the additional information it needs to approve or disapprove the transfer or lease. If BIPT did not ask for additional information, it notifies its decision within 3 months following the reception of the request. If BIPT asked for additional information, it notifies its decision within 3 months following the reception of the information in question.

## Chapter 6. Timetable

222. The current legislation imposes no timetable. Consequently, BIPT will determine the timetable of the assignment procedure, depending on the circumstances. However, in order to assist potential candidates in the preparation of bids, Table 7 provides an indicative timetable of the intended process. BIPT is by no means bound by this indication and accepts no responsibility with regard to the non-observance of this indication. This final information will be published on BIPT's website later on.

Call for candidates	20 February 2020
Submission of applications	15 May 2020
Notification of successful candidates	Early June 2020
Start of the assignment procedure	Early July 2020

**Table 7 : Indicative calendar**

## **Chapter 7. Additional information**

### **7.1. Information request**

223. Information on this memorandum and the assignment procedure, including during the procedure, must be requested in writing or by e-mail to BIPT with the indication "Question Auction 2020":

Belgian Institute for Postal Services and Telecommunications  
Ellipse Building - Building C  
*Boulevard du Roi Albert II, 35*  
*B-1030 Brussels*  
E-mail: [auction2020@bipt.be](mailto:auction2020@bipt.be)

224. An acknowledgement of receipt will be sent for each request.

225. BIPT reserves the right not to reply to questions. However, if BIPT does give an answer, it will publish the question (in a form that does not disclose the identity of who is asking the question) and the answer on its website. Therefore, the author of the question will see to it that his/her question does not include any confidential information that should not be published. If need be, the author will draw BIPT's attention to the confidential parts in the question and will also submit a non-confidential version of the question. This information will be treated by BIPT in accordance with Article 23, § 3, 1<sup>o</sup>, of the Act of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors.

### **7.2. Availability of the memorandum**

226. This document can be downloaded in French, Dutch or English on BIPT's website. BIPT will not provide the document in writing.

## Annex. Definitions and glossary

For the purposes of this document, the following terms shall have the following meanings:

BIPT	Belgian Institute for postal services and telecommunications
700 MHz band	703-733 MHz and 758-788 MHz frequency bands
800 MHz band	791-821 MHz and 832-862 MHz frequency bands
900 MHz band	880-915 MHz and 925-960 MHz frequency bands
1400 MHz band	1427-1517 MHz frequency band
1800 MHz band	1710-1785 MHz and 1815-1880 MHz frequency bands
2 GHz band	1900-1980 MHz and 2110-2170 MHz frequency bands
2.6 GHz band	2500-2690 MHz frequency band
3.6 GHz band	Frequency band 3400-3800 MHz
ECA	Act of 13 June 2005 on electronic communications
Royal Decree 2600 MHz	Royal Decree of 22 December 2010 on radio access in the 2500-2690 MHz frequency band
Candidate	Candidate for rights of use who has submitted an application (see section 4.3)
Eligible candidate	Candidate found eligible by BIPT (see section 4.6)
Successful candidate	Candidate holding the highest regular bid for the single lot at the end of the final round