

TELECOMMUNICATIONS LAWS OF THE WORLD

Luxembourg



Downloaded: 29 April 2024

LUXEMBOURG



Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The Grand Duchy of Luxembourg is heavily invested in providing a nation-wide infrastructure for telecommunications and ensuring competition in the market.

Facilitating access to the market has been one of the key factors that Luxembourg has taken into account by suppressing, in general terms, the requirement of prior licensing to provide electronic communication services and setting up a regime of prior notification.

As part of the European Union and the European Conference of Postal and Telecommunications Administrations, Luxembourg has striven to keep in line with the Europe-wide harmonising efforts in the sector of telecommunications.

In order to do so, Luxembourg has enacted a number of rules to ensure legal certainty and market efficiency, mainly through the Act on Electronic Communication Networks and Services, which serves as a pillar of the legal framework on the issue, and has entrusted the Luxembourgish Institute for Regulation (*Institute Luxembourgeois de Régulation - ILR*) with ample powers of regulation and surveillance to ensure fair competition in the market and efficient use of the telecommunications-linked resources.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The main piece of legislation which governs the provision of telecommunication services in Luxembourg is the Act of 17 December 2021 on electronic communications networks and services ("**AECS**"), which implements Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

Among the key features of the AECS are the following:

- Regulates access to the telecommunications market by imposing that any natural or legal person wishing to provide electronic communications networks or services must notify the Institute of this intention. This person is deemed to be the holder of a general authorization (Art. 15 of the AECS).
- Imposes obligations upon the telecommunication services providers, including, *inter alia*, payment of administrative fees, respect for data protection regulations, facilitation of lawful interception, transparency and must carry obligations (Art. 19 of the AECS).
- Grants sufficient powers of the ILR to request information to the service providers (Arts. 24 and 25 of the AECS), to determine the needs of deployment of telecommunications network to cover certain geographic zones (Art. 26 of the AECS), to impose sanctions (Arts. 33-34 of the AECS) and to solve disputes between operators (Arts. 29-31 of the AECS).

- Regulates the procedures to harmonise the use of radioelectric spectrum (Arts. 32 and 37-41 of the AECS) and its strategic planning and coordination (Arts. 51 and 52 of the AECS).
- Establishes the conditions of passage rights in public and private property (Arts. 45-51 of the AECS).
- Governs the regime of granting of individual rights to use the radioelectric spectrum (Arts. 57-66 of the AECS) and of numbering resources (Arts. 105-109 of the AECS), upon certain conditions and individual request.
- Determines specific restrictions and obligations for those companies that enjoy market power in order to ensure fair competition (Arts. 79-92 of the AECS).
- Enshrines the rights of end-users, including, without limitation, non-discrimination, safeguard of fundamental rights, right to information, portability rights, data protection and rights concerning bundled services (Arts. 110-134 of the AECS).
- Sets the rules for the provision of the universal telecommunications service to ensure the provision of affordable access to broadband and voice telecommunications services, of a specified quality, to every end-user irrespective of the geographic location (Arts. 95-104 AECS).

This Act is complemented by a plethora of other regulations that need to be taken into account. The most important are, without limitation:

- The [Act of 30 May 2005](#), on the organization of the management of radio waves, as amended by [Act of 27 February 2011](#), which establishes requirements under which the use of radio waves can be granted by the State to telecom operators.
- The [Act of 17 June 2016](#), on the making available on the market of radio equipment, which sets the minimum requirements to commercialize, in broad terms, radio equipment in Luxembourg, the obligations of manufacturers, importers and distributors, the procedures to be followed to ensure compliance of radio equipment and the surveillance of the market.
- The [Act of 30 May 2005](#), on the organization of the Luxembourg Institute of Regulation, regulating the organisation and functioning of the ILR, as modified by different ulterior regulations, that establishes the functioning and competencies of the ILR.
- The amended [Act of 30 May 2005](#), on the protection of privacy in the electronic communications sector, establishing specific rules regarding privacy in the domain of telecommunications.
- The [Grand-Ducal Regulation of 5 December 2018](#), amending the [Grand-Ducal Regulation of 21 February 2013](#), fixing the amount and the methods of payment of the fees for the provision of radio frequencies, which establishes the fees to be paid by the operators and the methods of payment thereof for the making available of radio frequencies.
- The Luxembourg Institute of Regulation - [Regulation ILR/T17/11 of 14 December 2017](#), on technical specifications for the interception of electronic communications in Luxembourg - Electronic Communications Sector.
- The [Regulation ILR/F20/3 of 10 September 2020](#), determining the allotment and allocation plan for radio waves (Frequency Plan)
- The [Regulation F13/01/ILR of 15 March 2013](#), determining the terms of payment of fees for the provision of radio frequencies and the terms of renewal of licenses, which determines the terms of payment of fees for the provision of radio frequencies and the terms of renewal of licenses It also covers the terms of payment of the fees in accordance with [Article 4 of the Grand-Ducal Regulation of 21 February 2013](#), laying down the amount and terms of payment of the fees for making radio frequencies available;

- The [Regulation ILR/F22/1 of 18 May 2022](#), on procedures and modalities for obtaining and recognizing operator's certificates for maritime and inland waterway navigation.
- The [Regulation F16/02/ILR of 18 March 2016](#), on the assignment of call signs of the amateur service in Luxembourg, limited to country codes' assignment of the amateur service provided for in [section 7bis of the Act of 30 May 2005](#), on the organization of the management of radio waves, modified by [Act of 27 February 2011](#), that corresponds to the institute's missions in relation with radio wave management.
- The [Regulation 14/174/ILR of 14 July 2014](#), on numbering rules, the national numbering plan and fees for numbering resources, modified by [Regulation 16/201/ILR of 19 February 2016](#).

REGULATORY BODIES OR AUTHORITIES

Luxembourg Institute of Regulation (Institut Luxembourgeois de Régulation)

Address: 17, rue du Fossé, L-1536 Luxembourg, Luxembourg

Telephone: (+352) 28 228 228

Fax: (+352) 28 228 229

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The AECS applies to telecommunication networks and services providers. However, according to Article of the 4 of the AECS, the AECS does not apply to electronic communications networks and services installed and operated by the State for its own purposes.

The AECS distinguishes, as in other European countries, between providers of electronic communications networks and those of telecommunication services.

A "electronic communications network" is defined by the AECS as transmission systems, whether or not based on a permanent infrastructure or centralized administration capability, and, where applicable, switching or routing equipment and other resources, including network elements that are not active, that permit the conveyance of signals by cable, wireless, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including the Internet) and mobile networks, electrical power systems, insofar as they are used for the transmission of signals, networks used for radio and television broadcasting, and cable television networks, regardless of the type of information transmitted (Cf. Art. 2, point 1 of AECS).

The AECS also covers the scope of "very high-capacity network", which is defined as being either an electronic communications network that is composed entirely of fibre optic elements at least up to the point of distribution at the serving location, or an electronic communications network that is capable of providing, under typical peak hour conditions, comparable network performance in terms of downstream and upstream throughput, resiliency, error-related parameters, latency, and jitter. Network performance can be considered comparable regardless of variations in end-user experience that are due to the inherently different characteristics of the medium over which the network's ultimate connection is made at the network termination point (Cf. Art. 2, point 2 of the AECS).

As for the definition of "electronic communication services", it is provided by the article 2 point 4 of the previously cited Act, and means that the service normally provided for remuneration via electronic communications networks which, except for services consisting of the provision of content transmitted by means of electronic communications networks and services or the exercise of editorial responsibility over such content, includes the following types of services:

- an "internet access service" as defined in Article 2(2)(2) of [Regulation \(EU\) 2015/2120](#);

- an interpersonal communications service; and
- 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.

Article 2 of the AECS provides for other specific definitions of services and networks, such as associated services or interpersonal communications services based on numbering.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Article 14 of the AECS establishes that in order to provide telecommunication services and networks a general authorization for usage and/or establishment of the electronic communications networks and services is required.

In order to be granted the general authorization, the operators must notify the ILR of their intention to provide an electronic communications network or service (Art. 15 of the AECS). Once the ILR has been notified, it is possible for the operator to commence the provision of the services and will be subject to the obligations included in Article 19 of the AECS.

Notification can be made by postal delivery to the ILR using their [standardised form](#).

In certain cases, it is possible to be granted individual rights of use of the radioelectric spectrum (Art. 57 of the AECS). According to article 59 of the AECS, in the matter of **individual rights of use of radio spectrum** for electronic communications networks and services, a prior public consultation conducted by the Luxembourg Institute of Regulation is required to guarantee an efficient use of these resources in accordance with the Act. Although, this provision is rarely applicable, certain frequency bands may be subject to this requirement in order to ensure the maximization of the efficiency of the use (Art. 57 of the AECS). Individual rights of use of radio spectrum shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures (Art. 56 of the AECS), can be transferred (Art. 62 of the AECS).

As for the numbering or dialling resources, Article 105 of the AECS provides that the ILR is in charge of granting the rights to the national numbering resources. The ILR may also grant companies other than providers of electronic communications networks or services rights of use of numbering resources from the national numbering plan for the provision of specific services, on condition that adequate numbering resources are made available to meet current and near future demand.

As for the procedures regarding the **numbering resources**, they are determined by Article 106 of the AECS: the Luxembourg Institute of Regulation decides to grant an authorisation on objective and non-discriminatory basis after the receipt of the complete application and within three weeks in the case of numbering resources that have been allocated for specific purposes under the national numbering plan.

It is advisable to review the National plan of Numbering proposed by the Luxembourg Institute of Regulation, as it covers not only telephone numbers but also other numbering and addressing resources necessary for the proper functioning of telecommunications networks and services.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

Under Article 15 of the AECS, it is required that service providers inform the ILR about their legal status and form as well as their registration number, the place where they are registered in a trade register or similar public register in the European Union, the geographical address of the provider's principal place of business, if any, in the European Union and, if applicable, of any other branch in a Member State.

Therefore, providers should be established within the EU to comply with the previously mentioned regulation, but they do not need to be established in Luxembourg.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Under Article 70 and following of the previously mentioned AECS, companies are free to negotiate among themselves agreements establishing the technical and commercial terms and conditions for access or interconnection, in accordance with European Union law.

A company that does not provide services and does not operate a network in Luxembourg, and that requests access or interconnection, shall not be subject to authorization to operate.

Moreover, Article 18 of the AECS sets some provisions pertaining to the application of the general authorization in terms of interconnection and roaming regulations, where such companies offer public electronic communications networks or services, the general authorisation shall entitle them:

1. To negotiate interconnection with other providers of public electronic communications networks or publicly available electronic communications services holding a general authorisation in the European Union and, where appropriate, to obtain access to or interconnection of such providers in accordance with the AECS;
2. To obtain the possibility of being designated to provide different components of the universal service or to cover various parts of the national territory, in accordance with Article 97 of the AECS.

In addition, [Regulation \(EU\) 2022/612](#) of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union is applicable in Luxembourg, establishing the “roam like at home” principle, so there will be no additional charges for the use of telecommunication services for end-user when travelling within EU borders.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

There are several regulations on consumer protection in the telecommunication sector, namely:

- Articles 110-134 of the [AECS](#)
- The amended [Act of 30 May 2005](#), on specific provisions for the protection of the individual with regard to the processing of personal data in the electronic communications sector and amending Articles 88-2 and 88-4 of the Code of Criminal Procedure
- The 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 –“[GDPR](#)”)
- The [Consumer Code](#)

Consumers are defined article L. 010-1 of the Luxembourg Consumer Code as “*any natural person who acts for purposes that do not fall within the scope of his commercial, industrial, artisanal or liberal activity*”.

Legal persons in general and natural persons acting in a professional or commercial capacity are therefore excluded from the definition of consumer.

The AECS guarantees certain rights to end-users, as a legal entity or a natural person that is not operating a public telecommunications network or providing a publicly available telecommunications service, and thus also covers consumers.

Among the provisions of the AECS related to the rights of consumers the following could be highlighted:

- The right to non-discrimination (Art. 111 of the AECS)
- The right to safeguard of fundamental rights included in the European Charter of Fundamental Rights (Art. 112 of the AECS)

- The right to receive information regarding contracts (Art. 113 of the AECS, in relation to Articles L. 111-3, L. 113.1 and L. 213-5 of the Luxembourg Consumer Code, and Article 115 of the AECS).
- The right to transparency and offer comparison (Art. 117 and 118 of the AECS).
- The right to change providers and to the portability of the number (Art. 121 of the AECS)
- The right to service availability (Art. 123 of the AECS)

Additionally, in accordance with the amended Act of 30 May 2005, cited above, providers shall be subject to the following obligations:

- Guarantee to consumers the security of their services (Art. 3)
- Guarantee to consumers confidentiality of their communication services and related traffic data (Art. 4)
- Store consumers' traffic data during a defined period of six months. After the storage period, providers shall delete the said data or anonymise it. Data processing shall be limited to necessary activities (Art. 5)
- Providers processing location data other than traffic data shall retain such data for a period of six months. Providers shall look for consumers' consent to process the said data or anonymise the latter. Besides, providers shall inform consumers on data process, its purpose, duration, and transmission to third parties. Finally, it shall inform consumers of their right to withdraw their consent. Data processing shall be limited to necessary activities (Art. 9)
- Providers shall not send unsolicited communications for direct marketing purposes without subscriber's or user's prior consent, except if the latter gave its consent for analogous goods or services (Art 11).

Finally, it should be borne in mind that the GDPR applies to Luxembourg and that the Grand Duchy has implemented it via the [Act of 1 August 2018](#). Therefore, telecommunications operators are subject to these rules in relation to the processing of personal data of their end-users.

REGULATORY TAXES AND FEES

[Regulation ILR/T21/11 of 16 November 2021](#) sets the administrative charges to cover the overall administrative costs of the Regulator for the year 2022. Every year the ILR publishes a new regulation on the fees, so the information hereunder is subject to such changes.

Every registered company is subject to the payment of an annual tax of a variable amount depending on its turnover. For the financial year 2022, the rate of 0.65% of turnover is applicable.

Fees are paid on an annual basis following the scheme hereunder:

- 25% is invoiced in March 2022 and paid as an advance at the latest on 30 April 2022
- 25% is invoiced in July 2022 and paid as an advance at the latest on 31 Aug. 2022
- 25% is invoiced in October 2022 paid as an advance at the latest on 30 Nov. 2022
- For the remaining balance of 2022, it should be paid at the latest in the beginning of the 1st semester of the 2023

Notified undertakings with a total annual turnover in electronic communications services of less than EUR 600,000 communications services of less than EUR 600,000 shall be exempt from payment of the administrative fee defined in the paragraphs above.

Every first notification shall be subject to the payment of a one-time fee of EUR 2,500. The ILR shall proceed to confirm the registration of the operator only when payment has been verified.

Certain specific activities, such as specific uses of the radioelectric spectrum or the installation of certain radio equipment, may be subject to additional fees, which must be analysed on a case-by-case basis.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

According to Article 34 of the AECS, the ILR shall monitor and supervise compliance with the conditions of the general authorisation or rights of use for radio spectrum and numbering resources, the specific obligations referred to in Article 16(2) of the AECS, and the obligation to use radio spectrum in accordance with Articles 55, 56(1) and 58 of the AECS.

The ILR has the power to request companies that are subject to the general authorisation or benefiting from rights of use for radio spectrum or numbering resources to provide all information necessary to verify their compliance with the requirements of the general authorisation or rights of use for radio spectrum and numbering resources, or with the specific obligations referred to in Article 16(2) of the AECS [i.e., obligations related to, without limitation, interconnexion; conditional access to digital television and radio services; transparency, non-discrimination and other obligations that may be imposed to undertakings with significant market power (Arts. 79-92 of the AECS); as well as regulatory measures imposed by the ILR to retailers, including those affecting their retail tariffs (Art. 94 of the AECS)] or Article 58 of the AECS (i.e., conditions that may be imposed by the Administration when granting individual rights to use the radio spectrum, relating to, without limitation, efficient use of the spectrum, and coverage and quality obligations), in accordance with Article 25 of the AECS.

Pursuant to Article 33 of the AECS, companies benefitting from the general authorization may be fined by the ILR with a disciplinary fine of up to EUR 1,000,000 for any breach of their obligations under the AECS, any ILR regulations and decisions issued pursuant to the AECS, any binding decisions of the European Commission adopted pursuant to the provisions of Directive (EU) 2018/1972.

The maximum fine may be doubled in the event of recidivism.

In addition, the ILR may impose, either instead of or in addition to the monetary fine, one or more of the following disciplinary sanctions:

1. a warning;
2. a reprimand;
3. a ban on carrying out certain operations or providing certain services;
4. the temporary suspension of one or more managers of the undertaking.

Where it is established that a fact is likely to constitute an infringement under paragraphs 1 and 4, the ILR shall initiate an *inter partes* procedure in which the company concerned shall be given the opportunity to consult the file and to submit its written or oral observations. The company concerned may be assisted or represented by a person of its choice. At the end of the adversarial procedure, the ILR may impose one or more of the penalties referred to in paragraphs 1 to 3 on the undertaking concerned.

The decisions taken by the ILR following the adversarial procedure shall be reasoned and notified to the undertaking concerned.

The ILR may impose a penalty payment on its decisions, the daily amount of which is between two hundred and two thousand euros. The amount of the penalty payment shall consider, inter alia, the economic capacity of the undertaking concerned, and the seriousness of the infringement found.

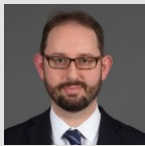
The penalties imposed by the ILR may be published.

An appeal for review shall be lodged with the administrative court against decisions taken by the ILR under Article 33 of the AECS.

In addition, in case a company has been granted individual rights to use the radioelectric spectrum, in case of a violation of their obligations under Articles 19.4 and 56-62 of the AECS it is for the Minister for Telecommunications to impose the sanctions which may include the withdrawal or suspension of said rights, in addition to a fine of up to one million euros.

The payment of fines and penalties imposed by the ILR or the Minister for Telecommunications shall be entrusted to the Administration of Registration, Domains, and VAT (*Administration de l'Enregistrement, des Domaines et de la TVA*).

KEY CONTACTS



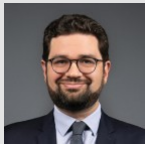
Olivier Reisch

Partner

DLA Piper Luxembourg

T +352 26 29 04 2017

olivier.reisch@dlapiper.com



David Alexandre

Counsel

DLA Piper Luxembourg

T +352 26 29 04 2614

david.alexandre@dlapiper.com

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.