

# The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009

A practical insight to cross-border Telecommunication Laws and Regulations



Published by Global Legal Group with contributions from:

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### 1 Framework

#### 1.1 What are the overall policies and objectives for the electronic communications industry and have these been published in draft or final form?

On 19.05.2008 the Albanian Parliament passed law no. 9918 “On Electronic Communications in Republic of Albania” (the “Law”). This law replaced the previous law no. 8618 dated 14.06.2000 “On Telecommunications in Republic of Albania”.

The Law lays down the principles of an open market of the electronic communications in Albania. It aims to promote the competition and the efficient infrastructure on the electronic communications based in the principle of the ‘neutral technology’. It insures the necessary and appropriate services in Albanian territory, in order to prevent the distortion of the competition in the electronic communications market. The Law is in line with the regulatory package of the European Union on electronic communications (2002).

The content of the electronic communications and the radio television broadcasting transmission services are not subject of the Law.

#### 1.2 Is Albania a member of the World Trade Organisation?

Albania became the 138th member of the World Trade Organisation on 8th of September 2000.

#### 1.3 Has Albania made commitments under the GATS/GATT regarding telecommunications and has Albania adopted the WTO Basic Telecommunications Agreement?

According to the ‘Protocol of Accession of Albania’ to the Marrakesh Agreement establishing the World Trade Organisation, Albania made commitments under the General Agreement on Trade on Services “GATS” and General Agreement on Tariffs and Trade 1994 “GATT 1994”. Anyhow, this Protocol provides that Albania may maintain a measure inconsistent with GATS/GATT (article I paragraph 4).

Further, the ‘Report of the Working Party on the accession of Albania to the World Trade Organisation’, provides that the commitments undertaken by Albania in telecommunication services are based on the scheduling principles provided by the following documents: (i) Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/REV.1); and (ii) Market Access Limitations on Spectrum Availability (S/GBT/W/3).

#### 1.4 How is the provision of electronic communications networks or services regulated? Is the provision of electronic communications networks or services open to competition in Albania?

The market players (“Providers”) are eligible to offer networks and electronic communications services upon General and/or Individual Authorisation (replacing the licensing procedure of the abrogated law). General Authorisation comprises all and any kind of electronic communications networks and services that do not involves use by the provider of frequencies and numbers. Individual Authorisation is granted to those providers which activity involves use of frequencies and numbers. Individual Authorisation would be subject to availability of the said as frequencies and serial numbers and to those considerations and restrictions explained in our response to question 2.1 herein below. The Law aims to promote the competition creating an open market of the electronic communications services based in the principles of non discrimination and transparency.

#### 1.5 Which are the regulatory and competition law authorities? How are their roles differentiated?

The Law brings innovations to the Electronic Communications and Mail Authority (the “Authority”), previously known as the Telecommunications Regulatory Entity. The Authority is the regulatory body which supervises both the electronic communications and mail services market. (This service shall be subject to a separate law.) The Authority encourages the competition ensuring to all categories of users qualified electronic communications services, subject to tariffs non superior to the average tariffs applicable in the European Union countries. According to the Law, the Authority should conduct its activity and run its duties based on the principles of transparency, non-discriminatory and proportional rights, conditions and procedures regarding to the providers of networks and electronic communication services.

The Authority is obliged by the Law to cooperate with the Albanian Competition Authority for the issues relating to applicability of competition law affecting the market of electronic communications and the mail services.

#### 1.6 Are decisions of the national regulatory authority able to be appealed? To which court or body?

Decisions of the Authority may be appealed before the Authority Board of Directors within 10 days; the Board then has to make a

decision within 30 days from filing of the appellant. The decision of the Authority Board of Directors may be appealed within 30 days before the competent district court (i.e. a first instance court).

## 2 Licensing

### 2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process and timescales.

As mentioned in question 1.4 above, any Providers are free to offer networks and electronic communications services upon (i) General Authorisation and (ii) Individual Authorisation as follows:

- (i) *General Authorisation:* Through written notification addressed to the Authority along with certain required documents, in case the offer of networks and electronic communications services does not require use of end-resources (numbers and frequencies). The Authority registers in the electronic database the Provider within 15 days from the notification confirming in writing to the Provider the registration in the electronic database. The registration is considered done, in cases where the Authority does not reply to the applicant within the period of 15 days.
- (ii) *Individual Authorisation:* After notification and granting the right to use the end-resources in case the offer of networks and electronic communications services requires such resources. The Authority issues the Individual Authorisation for the use of frequencies and numbers based on the Plan of the Frequencies Utilisation and Plan of the Numbers Utilisation.

The Provider submits to the Authority the application for being equipped with the individual authorisation for the use of frequencies and numbers along with certain required data and documents. The Authority is obliged to provide for such authorisation within 30 days from the application date, unless it is refused based on certain criteria provided by the Law, which mainly relates to dangerous interferences on electronic and electric equipments, harmful of the public order or national security.

### 2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

The offer of the electronic communication network is subject to General Authorisation issued by the Authority, unless it requires the use of frequencies which should have prior approval by this authority (i.e. the Individual Authorisation).

The networks of electronic communications and related infrastructure must be constructed according to the applicable laws on urban planning, constructions and environmental protection. The Providers while constructing/using the networks of communication services must keep safe public order/security and public health.

The Providers of the public electronic communication networks are required to provide for joint utilisation of the facilities and assets for the purpose of respecting the urban planning and environmental protection when constructing/installing their networks. The Providers of public electronic communication networks are obliged by Law to enter into agreements for joint utilisation of the facilities and assets based on an applicable fee. A Provider may refuse to enter into an agreement for joint utilisation in case it is technically impossible or if the party requiring such joint utilisation refuses to pay the applicable fee.

The legal entities pursuing activities other than the offer of the services and/or the networks of the electronic communication services, but own networks or offer services of electronic communications for private use, are obliged to notify the Authority and be equipped with the general authorisation in case they decide to offer such networks and electronic communications services to the public (according to the procedures mentioned in question 2.1 above). These legal entities are either obliged by the Law to keep on separate accounts the revenues coming for these services or to establish a new legal entity pursuing this specific activity.

Anyhow, all the above requirements would be applicable on a case-by-case basis.

### 2.3 May licences or other authorisations be transferred and if so under what conditions?

The Law is silent on the transfer of the General Authorisation while it prohibits the transfer of the individual authorisation i.e. meaning the right of use of a frequency and/or number without prior approval by the Authority. The holder of the individual authorisation should address the written request to the Authority for the transfer. The Authority pursues verification on the proposed transferee in order to prevent any distortions of the electronic communications market and insure the efficiency of the electronic network and services and to protect the public interest.

### 2.4 What is the usual or typical stated duration of licences or other authorisations?

According to the Law, the Authority issues the individual authorisation for a period of up to 15 years, that can be renewed provided that all Law requirements have been fully complied with. The individual authorisation used for air and sea movable services are issued for perpetual duration depending on the operability of such services (airplane, maritime services). Further the individual authorisation for use of the frequencies on researches and tests of the radio communication equipments is issued by the Authority for a period of at least 90 days and for specific events for a period of time not more than 60 days.

The Law is silent on the duration of the General Authorisation issued for electronic communication services not involving the use of numbers and frequencies.

## 3 Public and Private Works

### 3.1 Are there specific legal or administrative provisions dealing with access to public and private land in order to install telecommunications infrastructure?

The Law provides the right of the Providers to use the plots of land or constructions or ducts/pipes either public or private for the settlement of the electronic communication equipments as well as their maintenances.

Before starting the construction works on the public owned plot of lands and premises, the provider must inform the respective authorities and respect the rules set on by the same Law, including but not limited to environment protection.

The Providers must use the private properties (lands, objects) in agreement with their owners according to the applicable laws. In case of damages to the private property from the instalment and/or maintenance of the electronic communication equipments the provider is obliged to remunerate such damages to the owner.

### 3.2 Do any specific rules exist which assist in securing or enforcing rights of way over public or private land, for the installation of network infrastructure?

The Law (art. 93) recognises in principle to the Provider the right to use and access both private and state owned properties for passing through the network infrastructure and its maintenance. In the case of a private owned property, the Provider's rights of use and access would be agreed upon between the property owner and the Provider, subject to an agreement. The Law does not address clearly how the right of access and/or use of a state owned property would be recognized practically to the Provider.

### 3.3 Is there a specific planning or zoning regime that applies to the installation of network infrastructure?

The Law is silent on application of specific planning or zoning regime, nevertheless the provider must construct networks of electronic communications in accordance with the applicable laws on urban planning, constructions and environmental protection. This means that before starting to construct its network infrastructure, the Provider needs to obtain the relevant information from the local authorities (i.e. Municipality or Commune).

### 3.4 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables?

As mentioned in question 2.2 herein above, to the Providers of the public electronic communication networks are required, to provide for joint utilisation/share of the facilities and assets for the purpose of respecting the urban planning and environmental protection when constructing/installing their networks. The Providers of public electronic communication networks are obliged by Law to enter into agreements for joint utilisation of the facilities and assets based on an applicable fee. The Provider may refuse to enter into agreement for joint utilisation in case the joint utilisation is technically impossible or the party requiring such joint utilisation refuses to pay the applicable fee. In both events the Authority resolves on settlement of the dispute.

## 4 Access and Interconnection

### 4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?

The Providers of the public electronic communications networks qualified by the Authority as Providers with significant power in market are obliged to ensure the communication between end users and offer service interoperability to all community. They are obliged to provide an interconnection offer to other providers within 30 days receiving the due payment.

The Providers have the right to negotiate and enter into written agreement for access and interconnection.

### 4.2 How are interconnection or access disputes resolved? Does the national regulatory have jurisdiction to adjudicate and impose a legally binding solution?

In case the Providers fail to negotiate the terms of the access and interconnection agreement within 45 days from the request for such access and interconnection, any of the Providers may submit

request for dispute resolution at the Authority. The latest reserves the right to enforce the access and interconnection.

### 4.3 Are charges for interconnection and/or network access subject to price or cost regulation and, if so, how?

The tariffs/charges for the public electronic communication services (including access and interconnection) must be settled by the Providers based in the principles of cost orientation, non discrimination of the end users and prevention of the non competition behaviours in the electronic communications and services market.

### 4.4 In the local loop are existing owners of access infrastructure required to unbundle their facilities and if so, on what terms or regulatory controls?

Please refer to our comments in questions 4.1 and 4.3 herein above.

### 4.5 How are existing interconnection and access regulatory conditions to be applied to new network technologies such as so-called next generation networks or IP-based networks?

The Law is silent on access regulatory conditions applicable to so-called next generation networks or IP-based networks.

## 5 Price and Consumer Regulation

### 5.1 Are (i) retail or (ii) wholesale price controls imposed on any operator in relation to fixed, mobile, or other services?

The Authority controls both the retail and wholesale prices. In case realises from the analyses performed to the access and interconnection market (i.e. the whole sale market) and to end-users/consummator market (i.e. the retail market) that there is no effective competition which means the providers with significant power market have applied unjustified expensive or cheap tariffs in disfavour to the end-users, the Authority may resolve on the adjustment of such price/tariff.

### 5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

Differently from the previous law the Law 9918/2008 provides for the right of the Providers to set up the tariffs of the electronic communications services based in the principles of cost orientation, non discrimination of the end users and prevention of the non competition behaviours in the electronic communications and services market. Nevertheless, the Authority reserves the right to adjust or impose the tariffs of electronic communications services as mentioned in question 5.1 above.

### 5.3 Are there any rules governing use and retention of customer call information?

Please refer to our comment in question 10.1 below.

## 6 Numbering

- 6.1 How are telephone numbers and network identifying codes allocated and by whom?

The Authority administers the Plan of Numbering, by allocating and insuring the efficient use of the numbers/serial numbers by the providers of the electronic communication services.

- 6.2 Are there any special rules which govern the use of telephone numbers?

The use of numbers and the serial numbers must have prior approval of the Authority. The provider of the public electronic communications networks and services must submit request at the Authority for being provided with numbers/serial numbers. The provider is obliged to deliver to Authority the numbers/serial numbers in case of non utilisation of such numbers. Further the provider may not transfer, lease the numbers/serial numbers without prior approval by the Authority and they are obliged to use such numbers/ serial numbers only for the purpose for which are granted.

- 6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

The Law is silent on the procedures of numbers activation for the use by the customers. Anyhow in virtue of law the customer (either prepaid or post-paid) must be subscribed and register it owns identity, data in order to have the number activated for use.

- 6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile).

The Providers (mobile and fix) of the public electronic communication services and networks offer to their subscribers the possibility of numbers porting. The porting of number is not applicable from the public networks of fix electronic communications to public networks of mobile electronic communications.

The Providers may charge the subscriber or the other providers for the transfer/porting of telephone number. Such charge must be cost oriented and must not serve as obstacle for the subscriber to use the service of number porting.

## 7 Fees

- 7.1 What fees and levies are payable and to whom with respect to the grant of a licence or other authorisation for the installation or use of network infrastructure or the provision of communication services?

The providers are obliged to pay to the Authority fees regarding to following services:

- For the supervision of the electronic communication market.
- For financing the services of universal services.
- For the determination and use of the frequencies (i.e. the individual authorisation).
- For the determination of numbers and serial numbers.

The fees under points (c) and (d) above are determined by resolution the Council of Ministers.

## 8 Submarine Cables

- 8.1 What are the main rules governing the bringing into Albania's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

Neither the Law nor the former regulations of ERT (the regulatory entity replaced by the current Authority) are silent to the rules governing the bringing into Albania territorial waters and the landing of submarine cables. Anyhow reference is made to the provisions of the Albanian Maritime Code upon which the installation of permanent submarine cables or platforms should have prior approval by the naval authorities and must not impede the circulation of the naval vehicles. Such installation must be reflected in the naval maps.

## 9 Radio Frequency Spectrum

- 9.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

The spectrum of frequency is considered in virtue of Law as a natural end-resource and is administered by (i) the Electronic Communications and Mail Authority (the Authority) for the frequency spectrum determined for civil use, excluding the frequency spectrum for radio and television broadcasting which is administered by (ii) the National Council of Radio and Television and by (iii) the Ministries of Defence, and of Internal Affairs and the State Information Service (i.e. the intelligent service) for frequency spectrum defined for the national security and the governmental services. The administration of the frequency spectrum by the above mentioned authorities is based on the National Plan of Frequencies approved by Council of Ministers decision.

Based on the National Plan of Frequencies, the Authority compiles the Plan of Frequencies Utilisation for the frequencies under it administration. The providers must use frequencies only after granting the individual authorisation by Authority.

- 9.2 In the grant of spectrum rights are distinctions made between mobile, fixed and satellite usage?

The Law does not make distinction between mobile, fixed and satellite usage when granting the spectrum rights.

- 9.3 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The Law is silent on regulation and installation of satellite earth stations and their use for up-linking and down-linking.

- 9.4 How is the use of radio frequency spectrum authorised in Albania? Do the procedures available include spectrum auctions and comparative selection of candidates?

As mentioned in the question 9.1 above, the radio and television frequency spectrum is administered by the National Council of Radio and Television and is not subject of this Law. Anyhow according to the law no. 8410 dated 30.9.1998 "On public and private radio and television in Albania", as amended there are two types of licences: (i) national; and (ii) local concerning to use of radio frequency spectrum. Both licences are granted by the National Council of Radio and Television based on the competition procedure of the candidates.

**9.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?**

The Law makes exceptions for use of the frequencies for the purpose of national defence and security. Such use of frequencies does not require the individual authorisation of Authority.

**9.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?**

The fees payable to for use of radio frequency spectrum relates to the issuance by National Council of Radio and Television of the both national and local licences for use of radio frequency. The Provider must pay 15,000 Albanian Lek for the local licence and up to 1,500,000 Albanian Lek for the national licence.

Further, according to the law no. 8410 dated 30.9.1998 "On public and private radio and television in Albania", the community is obliged to pay the tax for the receiver appliance (radio and television). Such tax is collected one per year through the invoice issued by the Albanian Power Corporation.

**9.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?**

The Law prohibits the trade of licence while the transfer must be made upon prior approval by the Authority. Please also refer to our comment on the question 2.3 above.

## 10 Interception

**10.1 What are the essential rules applicable to the interception of messages, traffic data and other call records? Which rules apply to the retention of such call data, and over which period(s)?**

The lawful interception of the electronic communications in Albania must be done in accordance with the applicable laws. The Providers of the services and networks of electronic communications should abide with such laws.

The providers of electronic communications networks and services are obliged to retain and administer the data files of their subscribers up to 2 years. Such files should contain (i) the data to enable the full identification of the subscriber, (ii) the identification of the end point equipment, (iii) the time, date and duration of the communication as well (iv) the called number. All this files upon request must be available to the authorities determined in the Albanian Penal Procedure Code, such as the Prosecutor Office.

## 11 The Internet

**11.1 Are services over the Internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the Internet at a wholesale and/or retail level?**

The Law does not regulate the Internet in deferent way to other electronic communication services. In virtue of Law the internet is consider one of the components of the electronic communications services.

**11.2 Are there any rules to prevent, restrict or otherwise govern Internet or email communications, in particular, marketing and advertising communications?**

According to the Law, email communications for marketing/advertising purposes is allowed only following prior approval of the end-users.

Are prohibited by Law, the emails for marketing purposes not bearing or hiding the identity of the sender, (or missing the address, or such address is not valid,) were the recipient may request discontinuance of such emails.

## 12 USO

**12.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

The Law ensures the universal service that is, the provision of a defined minimum set of services to all end-users in Albania territory, independently of geographical location, at an affordable price. The Authority elects one ore more providers of the universal services, based on the open bid procedure. The provider/s of the universal service are obliged to insure to the end-users to make and receive local, national and international telephone calls, facsimile communications and data communications for a bandwidth not less than 32kbit/s, at rates that are sufficient to permit functional Internet access and the possibility of the detailed billing of the services provided.

The provider/s of the universal services is eligible of compensation from funds administered by Authority in case the service offered creates unfair addition costs.

## 13 Foreign Ownership Rules

**13.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

The Law does not provide restriction related to direct or indirect foreign ownership interest in the electronic communications companies.

## 14 Future Plans

**14.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

To our best knowledge we are not aware of any imminent and significant changes to the legal and regulatory regime for electronic communication in Albania.

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