

TELECOMMUNICATIONS LAWS OF THE WORLD

Belgium



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BELGIUM



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OVERVIEW OF LEGAL LANDSCAPE

The Belgian Institute for Postal Services and Telecommunications (BIPT) is the regulator of the electronic communications market.

Subject to some exceptions (e.g. concerning the use of spectrum, depending on the frequency used), communication providers are generally authorised to operate in Belgium and do not require a licence, permit, consent, etc. However, providers of public electronic communications networks or of publicly available communications services (operators) need to inform the BIPT of their activities, as well as of changes to their activities (including the transfer and/or termination thereof).

This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Belgium is the Act of 13 June 2005 on electronic communications (the 'Telecommunications Act') which implements (amongst others, such as Directives 2006/24 and 2009/136) the following European Directives:

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities
- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/22/EC on universal service and user rights
- Directive 2002/58 on privacy and electronic communications
- Directive 2002/77/EC on competition in the markets for electronic communications networks and services
- Directive 2018/1972 establishing the European Electronic Communications Code

Several other laws may also be relevant with respect to the provision of communication services and the operation of communication networks:

- 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).
- The Code of Criminal Procedure, which governs the interception of communications.

REGULATORY BODIES OR AUTHORITIES

The BIPT is a federal institution which performs several tasks. As the regulator of the electronic communications market it, *inter alia*, has the task of promoting competition, contributing to the development of the internal market and protecting the users' interests.

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Community Regulators with regard to broadcasting

For the sake of completeness, the following regulators are of importance for the broadcasting in the three Belgian communities (Flemish, French and German-speaking):

- [The Flemish council for the media](#)
- [The French \(Walloon\) High Council for Broadcasting](#)
- [The Medienrat from the German-speaking Community](#)

Other important regulatory bodies

- The Belgian Competition Authority, which has been charged with (1) the duty of settling certain types of lawsuits between operators and (2) giving opinions (binding or not depending on the case) to the BIPT with regard to decisions that demand a market analysis imposed by the European regulatory framework.
- Mediation services, such as the ombudsman.

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

The Electronic Communications Act regulates both the activities of electronic communications networks ("ECN") and providers of electronic communication services.

A further subdivision is made between public and private providers. This is of importance, because providers of public ECN or services will qualify as operators and will thus have to fulfil the obligations corresponding to the role of an operator in Belgium.

To assess the public character of an ECN, it is necessary to consider whether there is an open or closed group of users. For example, a public ECN has an open user group as its target audience, whereas a non-public ECN only has a closed user group as its target audience. This closed user group is a specific group of individual users, with a certain stability and common interest, that predates the provision of the ECN or services.

Another possible way to qualify as a public ECN or service is to consider the service or network as 'publicly available'. For this, it is necessary to consider whether everyone in the targeted audience can generally choose to use the services offered or if the access to the services is partially restricted to a specific group of users.

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

No licence, permit, consent, etc. is required for communication providers to operate in Belgium, therefore communication operators have a general authorisation to operate in Belgium as required by the European Authorisation Directive. However, the Act on electronic communication sets forth an obligation for operators to notify the BIPT before starting to operate in Belgium.

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

From a telecoms regulatory perspective, a telecommunications provider is not required to be domiciled in Belgium prior to or during the provision of services. Generally, only the notification to the BIPT should be complied with, which can also be done by an operator established abroad.

However, it should be noted that a contact person is required. This contact person can be located elsewhere, but should remain available at all times.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act requires all providers of public electronic communications networks to negotiate in good faith, interconnection with other operators with a view to providing electronic communications services to the public.

Interconnection agreements have to be submitted to the BIPT.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

With regard to the provision of services (e.g. rules on information obligations) the Telecommunications Act does not make a clear distinction between business-to-business and business-to-consumer relations.

Most of these rules apply to 'subscribers' i.e. individuals and legal persons who use electronic communications services after having concluded a contract with an operator. Sometimes a specific provision is included in order to protect consumers (e.g. relating to the maximum initial duration of the contract).

Some specific consumer/end-user information obligations are imposed on operators concerning the access to their network and services, the use thereof, prices and potential costs in case of contract termination. A standard information file also need to be made for the consumers/end-users and should be sent to the BIPT. Consumers also have the right to change their subscription formula with their current operator at least once a year without any charge.

In addition to specific telecom rules, provisions of general consumer law also apply, such as rules concerning unfair terms or the rules concerning the tacit extension of services contracts.

REGULATORY TAXES AND FEES

Operators have to pay a registration fee and annual administrative fees. Amounts can be found [here](#).

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

In case of a breach of the Telecommunications Act, criminal fines of up to EUR 100,000 and imprisonment up to 4 years can be imposed.

Administrative fines of up to 1% of the turnover for the telecommunication activities of the last accounting year.

However, it is to be noted that higher fines are possible in some specific cases.

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