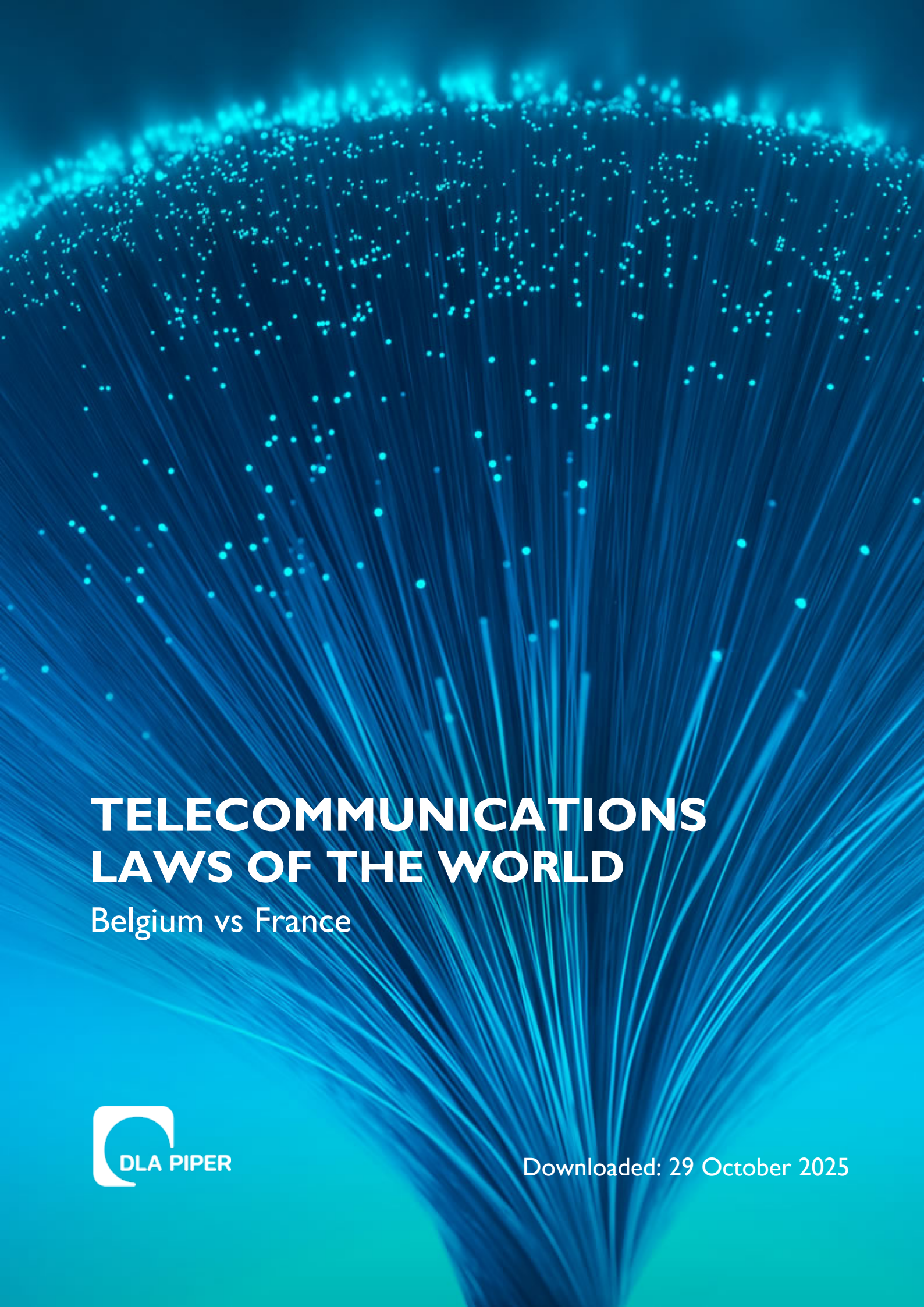




TELECOMMUNICATIONS LAWS OF THE WORLD

Belgium vs France



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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

FRANCE



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OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exemptions (notably concerning the use of spectrum or numbering resources), electronic communications operators do not require an authorization, licence, permit, consent, etc.

Since 28 May 2021, France does not longer require electronic communications operators to file a prior declaration with the telecoms regulator – the *Autorité de Régulation des Communications Electroniques et des Postes* or Authority of Electronic communications and Posts (ARCEP).

The roles and responsibilities of ARCEP are codified in the Code on Posts and Electronic Communications (CPEC). ARCEP regulates all electronic communications services including fixed line telecoms, mobiles, plus the airwaves over which wireless devices operate, and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All primary legislation governing the telecommunications sector in France is codified into the CPEC.

European Directive 2018/1972 establishing the European Electronic Communications Code, which repealed several directives adopted in 2002, was transposed into French law by Ordinance n° 2021-650 of May 26, 2021.

ARCEP regularly enacts decisions or recommendations on more specific regulatory matters, such as frequency planning, value added services regulations, tariffs regulation, etc.

In addition, the following legislation (as well as the subordinate legislation and regulations sitting underneath) may also impact the provision of electronic communications services and the operation of electronic communications networks:

- 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.

- Law No. 2021-1755 of December 23, 2021 for the reinforcement of the environmental regulation of the digital sector by ARCEP
- Law No. 2019-486 of May 22, 2019 on the growth and transformation of business
- Law No. 2016-1321 of October 7, 2016 for a Digital Republic
- Law No. 2015-990 of August 6, 2015 for growth, activity and equal economic opportunities
- Law No. 2008-776 of August 4, 2008, on the modernisation of the economy
- Law No. 2008-3 of January 3, 2008, on the development of competition in favour of consumers
- Law No. 2004-575 of June 21, 2004, on the confidence in digital economy
- Law No. 78-17 of January 6, 1978, on data processing, data files and individual liberties

The key targets and features of the primary legislation applicable to telecommunications, as codified in the CPEC, are the following:

- Measures aimed at ensuring fair competition between operators and an efficient regulation of the electronic communications sector, notably via the specific missions and rights granted to ARCEP and warranties to ensure its independence
- Regulating the management and allocation of radio frequencies and telephone numbers (including premium rate telephone services) to operators
- Protecting consumers and personal data, including for example, requirements to provide specific information to consumers, to provide notice in case of security breach, and to protect the content of their communications from unauthorised disclosure
- Empowering ARCEP to hear disputes between operators (although referral to ARCEP does not preclude the bringing of court proceedings)

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.

Belgian Institute for Postal Services and Telecommunications

Address: Ellipse Building, Bd. Du Roi Albert II, 35, 1030 Brussels

Telephone: 02 226 88 88

Website: www.bipt.be

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

REGULATORY BODIES OR AUTHORITIES

Autorité de Régulation des Communications Electroniques et des Postes - ARCEP

Address: 14 rue Gerty Archimède, 75012 Paris

www.arcep.fr

ARCEP is an independent authority that has jurisdiction over all electronic communications services and all electronic communications operators as defined under the CPEC.

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.

The CPEC notably regulates the operation of electronic communications networks and of electronic communication services.

An 'electronic communication network' is defined under the CPEC as any installation or any set of transmission or broadcasting installations as well as, where applicable, the other means ensuring the routing of electronic communications, in particular switching or routing means. The following are considered as electronic communications networks in particular: satellite networks, terrestrial networks, systems using the electrical network insofar as they are used for the routing of electronic communications and networks used for broadcasting or used for the distribution of audiovisual communication services.

An 'electronic communications service' means a service provided via electronic communications networks, which encompasses at least one of the following types of services: internet access service, 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. Services providing, or exercising editorial control over, content transmitted using electronic communications networks and services do not fall within the scope of this definition.

ARCEP also regulates the allocation of radio frequency blocks and telephone numbers in France.

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

Operators, defined as undertakings operating an electronic communications network or providing public electronic communications service, do not require an authorization, licence, permit, consent, etc.

While until 28 May 2021, France required operators to file a prior declaration with the ARCEP before the effective launch of their activities in France, such obligation does not longer currently apply.

Any operator wishing to operate a mobile communications network and/or to provide mobile communications services using scarce resources (i.e. radio frequencies or numbering) shall be granted with an authorisation from the ARCEP.

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.

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

From a telecoms regulatory perspective, there are no requirements for an electronic communications operator to be domiciled in France. Advice should however be sought from a tax perspective.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

A specific agreement providing for the technical and financial conditions applicable to the interconnection or the national roaming services, must be entered into between the two operators at issue and disclosed to ARCEP upon request.

In certain circumstances, and notably to foster competition between operators, ARCEP may impose on its own initiative or upon the request of one of the parties, technical and/or financial conditions for the interconnection or roaming, in an objective, transparent and non-discriminatory way.

With regards to interconnection:

- The CPEC requires all public electronic communications network operators to provide interconnection services to other public electronic communication network operators (including operators established in another EU Member State or a state party to the Agreement on the European Economic Area). A request for interconnection cannot be rejected if it is justified considering the needs of the requesting operator and the capacities of the hosting operators to satisfy such needs.
- Where ARCEP has found that one operator has a 'significant influence' on a relevant market, such operator will be bound by additional obligations

with respect to interconnection, including notably the obligation to publish an interconnection offer, in compliance with ARCEP's specific regulations and guidance.

- Interconnection agreements must include several mandatory provisions and notably details on the measures taken by both operators to ensure the security and integrity of the networks, services interoperability and data protection.
- Since 1 July 2021, the EU Commission Regulation 2021/654 sets maximum termination rates that operators are allowed to charge each other for mobile and fixed termination services respectively, directly applicable to Union operators. Such rates supersede the maximum termination rates as previously defined by ARCEP.

ARCEP also has jurisdiction over any disputes between operators in relation to interconnection or roaming.

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 needs 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.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CPEC contains a number of consumer specific provisions. A 'consumer' is defined as someone who uses or requests a service for non-business use.

Specific obligations relating to consumers include:

- The requirement to include certain mandatory terms in consumer contracts
- Conditions relating to term and termination
- The requirement to make certain information available to the customer, including a description of the services offered and the standard tariffs
- Availability of number portability
- Restrictions on sales and marketing activities

In addition to specific telecoms regulations and codes, provisions of general consumer law also apply such as rules concerning unfair consumer terms.

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.

REGULATORY TAXES AND FEES

The following basic taxes and fees are payable by electronic communications operators:

Tax on services

Electronic communications operators must pay to the tax authorities an annual tax set at 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million (taxes, interconnection and access fees excluded).

Tax for the funding of the universal service

Electronic communications operators must pay an annual tax for the funding of the universal service, which will be calculated pro-rata to their annual turnover (taxes, interconnection and access fees, and radio/TV broadcasting services fees excluded, and roaming-out fees included).

Tax on the use of scarce resources

Any operator which has been granted with scarce resources, whether spectrum or numbering, shall pay a specific annual fee.

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

ARCEP is notably in charge of ensuring that operators fully comply with their obligations pursuant to the CPEC and other applicable regulations.

Where ARCEP identifies a breach, it may, upon its discretion or following a claim, send a prior notice to a non-compliant operator and require it to take the necessary steps to rectify the breach. If the operator does not remedy the breach within the specified time, ARCEP may notably, after an inter partes procedure:

- Suspend the rights of the operator in relation to its activities (for a maximum duration of three years), or
- Levy a fine which will be proportionate to the seriousness of the breach and to the benefits drawn from such breach by the operator (within the limits of 3% of its net annual turnover increased to 5% in the event of a new breach of

the same obligation, or EUR 150,000 in the event its previous annual turnover cannot be assessed, increased to €375,000 in the event of a new breach of the same obligation)

ARCEP may also require entities to provide certain information relating to ARCEP's regulations or to their networks and/or services.

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