

TELECOMMUNICATIONS LAWS OF THE WORLD

Brazil vs Germany



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BRAZIL



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OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated activity in Brazil.

The practice of telecom activities in the country requires the prior attainment of specific authorisations before the Brazilian Telecommunications Agency (*Agência Nacional de Telecomunicações - ANATEL*), which is linked to the Brazilian Ministry of Communications. The type of authorisation and the related requirements vary according to the intended telecom activity.

As a regulatory agency, ANATEL is responsible for the regulation, inspection and granting of authorisations required for the performance of telecom activities in Brazil. ANATEL also has the power to apply administrative sanctions in the case of violations to the provisions of the telecom regulation.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecom activities in Brazil is the General Telecommunications Law (Federal Law No. 9,472 of 1997, as amended - LGT).

The LGT was enacted in 1997 as a consequence of the denationalisation of telecom activities in Brazil. It provides the key definitions relating to telecom activities and establishes the basis for the organisation of telecom sector.

ANATEL's Regulatory Framework

ANATEL's regulatory framework involves a high number of regulatory acts (including regulations, instructions and opinions) which apply to several aspects of telecom activities. Such regulation has been going through amendments to reflect technology developments and streamline the telecom regulatory environment.

GERMANY



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OVERVIEW OF LEGAL LANDSCAPE

In Germany, the telecommunications sector is regulated mainly at the federal level in the German Telecommunications Act (*Telekommunikationsgesetz – TKG*). The regulator is the Federal Network Agency (*Bundesnetzagentur – BNetzA*).

This German telecommunications regulation is based on the European Electronic Communications Code (Directive (EU) 2018/1972 – EEEEC) that entered into force on 21 December 2020. The updated TKG transposing the EEEEC entered into force on 1 December 2021.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The telecommunications sector is mainly regulated by the following laws in Germany:

- TKG: Telecommunications Act (*Telekommunikationsgesetz*)
- TTDSG: Act on Data Protection and the Protection of Privacy in Telecommunications and Telemedia (*Gesetz zur Regelung des Datenschutzes und des Schutzes der Privatsphäre in der Telekommunikation und bei Telemedien – Telekommunikations-Telemedien-Datenschutz-Gesetz*)
- FuAG: Radio Equipment Act (*Funkanlagen-Gesetz*)
- BSI-G: Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik = BSI-Gesetz*) as amended by the Second Act increasing the security of information technology Systems, also

ANATEL regulates the following aspects relating to the telecom sector, among others:

- ANATEL's organisation, objectives and functioning;
- Telecom strategic planning, the general telecom regulation plan and inspection/administrative proceedings;
- Fixed telecom service (or STFC) (related to the communication between two fixed points/either local or long distance);
- Mobile telecom service (or SMP) (related to mobile communications services);
- Multimedia communications service (or SCM) (related to the provision of capacity to transmit, emit and receive multimedia information to subscribers within a determined private area);
- Limited use telecom services (private telecom services utilised by the user itself or by private groups, and related to certain activities such as aerospace research, meteorology services, etc);
- Radio communications (related to communications via radio);
- Satellite (related to satellite exploration);
- TV subscription (related to paid TV services);
- Radio diffusion (related to open TV and radio);
- Inter-connection (related to telecom network interconnection);
- Telecom product certification (related to requirements and procedures for the certification of telecom equipment);
- Radiofrequency (related to, among other things, procedures and authorisations for the uses of radiofrequency); and
- Rights and obligations of telecom market players (providers, users, equipment manufacturers, etc).

called IT Security Act 2.0 (*IT-Sicherheitsgesetz 2.0* = *IT-SiG 2.0*).

A number of regulations have been issued to regulate more details. These include (among others):

- TKÜV: Telecommunications Surveillance Regulation (*Telekommunikations-Überwachungsverordnung*)
- TNV: Telecommunications Numbering Regulation (*Telekommunikationsnummerierungsverordnung*)
- FSBeitrV: Frequency Protection Contribution Regulation (*Frequenzschutzbeitragsverordnung*)
- TKTransparenzV: Telecommunications Transparency Regulation (*Telekommunikations-Transparenzverordnung*)
- NotrufV: Emergency Call Regulation (*Notrufverordnung*)
- 26. BImSchV: 26. Ordinance on the Implementation of the Federal Immission Control Act (*Ordinance on Electromagnetic Fields*)
- BEMFV: Ordinance on the Verification Procedure for the Limitation of Electromagnetic Fields (*Verordnung über das Nachweisverfahren zur Begrenzung elektromagnetischer Felder*)

REGULATORY BODIES OR AUTHORITIES

Agência Nacional de Telecomunicações

Address: SAUS Quadra 6 Bloco H, Ala Norte, Brasília, Brazil, Zip Code 70070-940

Website: Anatel

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

Telecom Services Legal Definition

The LGT defines telecom services as the “set of activities that enables the telecommunications offering” (“**Telecom Services**”).

The term telecommunications is defined as “the transmittal, production or reception, by wire, radio electricity, optical means or any other electromagnetic process, of symbols, characters, signals, writings, images, sounds or information of any nature”.

The LGT also establishes the activities that do not consist in Telecom Services, which includes:

- The provision of satellite capacity;
- Activities related to the registration and qualification of users and equipment for the access to Telecom Services; and
- The value-added service, defined as “the activity that adds to its corresponding telecommunications service (and to which it holds no similarity), new utilities related to access, storage, presentation, handling and retrieving of information”.

Classification of Telecom Services

REGULATORY BODIES OR AUTHORITIES

The German regulator for the telecommunications sector is the Federal Network Agency (Bundesnetzagentur – BNetzA).

Official full name: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway)

Address: Tulpenfeld 4, 53113 Bonn, Germany

Telephone: +49 228 14-0

Website: www.bundesnetzagentur.de/EN

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

The regulation mainly applies to telecommunications networks, telecommunications services as well as to telecommunications equipment and associated facilities.

The main requirements of the TKG are directed at operators of telecommunications networks and providers of telecommunications services. But there are also additional requirements for persons participating in the provision of telecommunications services.

The main requirements of the FuAG are directed at manufacturers of radio equipment and authorized representatives but also to importers and distributors.

Generally, the regulation applies to networks/equipment operated in Germany and services provided in Germany. It does generally not matter where the operator/provider is established or is located.

Telecom services/activities may be classified by several aspects, including:

- Broadness (collective or restricted interest);
- Legal regime (public or private); and
- Authorisation modality (concession, permission or *stricto sensu* authorisation). Similarly, there are several types of telecom services/activities modalities. Each one of such modalities is regulated by ANATEL.

Telecom Activities Regulated by ANATEL

ANATEL regulation applies to the activities described in ANATEL's Regulatory Framework above.

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

The provision of Telecom Services in Brazil requires prior authorisation from ANATEL.

The type of authorisation (i.e., concession, permission or *stricto sensu* authorisation) and the related requirements vary according to each Telecom Service modality.

ANATEL's prior authorisation is also required for:

- Use of radiofrequency; and
- Telecom equipment certification.

In addition to the above, ANATEL is also responsible for granting satellite exploitation rights (landing rights), as well as for regulating the satellite use for transportation of telecom signals.

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

The operation of telecommunications networks and/or the provision of telecommunications services does generally not require a licence in Germany.

There is a notification requirement for anyone who commercially operates public telecommunications networks or commercially provides publicly available telecommunications services that are not number-independent interpersonal telecommunications services (Sec. 5 TKG). The notification needs to be filed by completing BNetzA's official notification form without undue delay.

In addition, the use of German frequencies requires a frequency allocation (Sec. 91 TKG). Depending on the frequencies to be used, this can be a general allocation (for everyone) or an individual allocation (just for the specific person/entity that applied for the specific frequency use).

Radio equipment generally needs a European conformity assessment (Sec. 18 FuAG). And high-frequency installations with an equivalent isotropic radiated power (EIRP) of 10 watts or more may only be operated if the installation has received a site certification (*Standortbescheinigung*, Sec. 4 BEMFV).

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

As a rule, in order to provide Telecom Services in Brazil the entity must be incorporated, organised and domiciled in the country. Foreign participation in or control of those entities is allowed.

In fact, telecommunications sector counts with foreign capital presence since the privatization of the Telebras system back in 1998. However, before 2021, it was necessary for non-domiciled persons to incorporate a local holding in the country to directly hold the Brazilian telecommunications company shareholding control.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection is regulated by the LGT and by ANATEL.

Interconnection regulation includes:

- Requirements for the execution of interconnection agreements among the telecom providers (which must be approved by ANATEL); and
- Definition of related interconnection compensation/tariff.

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

The German telecommunications regulation does not require operators of telecommunications networks or providers of telecommunications services to be domiciled in Germany or even in the EU.

However, some provisions require a contact person based in the EU (Sec. 166 (1) No. 2 TKG) or a general receiving agent in Germany (e.g., Sec. 62 (1) No. 3, (2) No. 3 c), Sec. 118 (1) No. 2 and Sec. 170 (1) No. 3 b) TKG). And there are provisions that require some of the regulatory duties to be carried out in Germany (e.g., to store traffic data in Germany, Sec. 176 (1) TKG, or to operate the technical facilities for controlling lawful interception functionalities in Germany, Sec. 14 (1) TKÜV).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Operators of public telecommunications networks are required, upon request, to negotiate with other companies an offer of access and interconnection to ensure users' communication, the provision of telecommunications services and their interoperability throughout the European Union (Sec. 20 (1) TKG).

BNetzA is authorized to impose obligations on companies that control access to end-users to the extent necessary to ensure end-to-end connectivity or to ensure interoperability. In particular, it may require them to interconnect their telecommunications networks with those of other companies (Sec. 21 (1) TKG).

Under certain conditions, BNetzA may also require providers of number-independent interpersonal telecommunications services to make their services interoperable (Sec. 21 (2) TKG).

Furthermore, BNetzA is authorized to require telecommunications network operators with significant market power to create certain necessary prerequisites for the interoperability of end-user services or for roaming in mobile networks, to enable the interconnection of public telecommunications networks or to provide open access to technical interfaces,

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecom Services users' rights and contracting requirements are subject to Anatel regulation. For such purposes, Telecom Services user (or consumer) is considered as any legal entity or individual which uses telecom services.

Telecom service users' basic rights include the following:

- Access to Telecom Services in the Brazilian territory that satisfy a certain standard in terms of quality and consistency;
- Freedom of choice regarding the Telecom Services provider;
- Non-discrimination regarding conditions for Telecom Services access and fruition;
- Access to adequate information regarding the Telecom Services rendering conditions, tariffs /prices and services suspension;
- The inviolability and secrecy of communication (subject to an exception for specific cases, as provided for by law);
- A right to request the non-disclosure of its user access code;
- Non-suspension of services rendered under the public regime (as the STFC), except in specific cases (eg debt directly derived from the services utilisation and breach of contractual obligations);
- Personal data privacy;
- A right to have complaints duly answered by the Telecom Services provider;
- A right to present claims against the Telecom Services provider before ANATEL and the

protocols or other key technologies that are indispensable for the interoperability of services or for services for virtual telecommunications networks (Sec. 26 (3) No. 4, No. 7 and No. 8 TKG).

The EU roaming regulation (Regulation (EU) 2022/612) directly applies in Germany.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG contains numerous provisions related to end-user protection that are implemented from the European Electronic Communications Code. Most of these requirements may not be excluded, at least not for companies that are neither classified as microenterprises nor as non-profit enterprises or organizations (Sec. 71 TKG). The relevant provisions do not exclusively refer to the term "end-user" but also to "consumers", "customers" or "end-customers" or "subscribers".

"User" means any natural or legal person using or requesting a publicly available telecommunication service for private or business purposes (Sec. 3 No. 41 TKG).

"End-user" is defined as a user that does not operate a public telecommunications network or provide publicly available telecommunications services (Sec. 3 No. 13 TKG).

"Consumer" is defined as any natural person who enters into a legal transaction for purposes that can predominantly be attributed neither to his commercial nor to his independent professional activity (Sec. 13 of the German Civil Code).

Specific obligations relating to end-user protection include (among other requirements):

- Non-discrimination (Sec. 51 TKG),
- Transparency requirements regarding the terms and conditions (Sec. 52 (1) TKG),
- Detailed requirements for contracts (Sec. 54 to 57 TKG),
- Requirements for the timely elimination of and compensation for disruptions (Sec. 58 TKG),
- Number portability (Sec. 59 TKG),

consumer defence authorities; and

- A right to be indemnified for any damages caused by virtue of its users' rights violation.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies (applicable rates vary depending on the chosen tax regime)

- Corporate Income Tax - (*Imposto de Renda da Pessoa Jurídica - IRPJ*);
- Social Contribution on Net Profits (*Contribuição Social Sobre o Lucro Líquido - CSLL*); and
- Tax on Social Integration Program (*Programa de Integração Social - PIS*) and Tax for Social Security Financing (*Contribuição para o Financiamento da Seguridade Social - COFINS*).

Main Taxes and Fees Levied Over Telecom Activities

- Value-Added Tax on Sales and Services (*Imposto sobre a Circulação de Mercadorias e Serviços de Transporte Interestadual e Intermunicipal e de Comunicação - ICMS*), which is a State Tax;
- Fund for Universal Access to Telecommunications Services (*Fundo de Universalização dos Serviços de Telecomunicações - FUST*);
- Fund for Telecommunications Technological Development (*Fundo para o Desenvolvimento Tecnológico das Telecomunicações - FUNTTEL*); and
- Telecommunications Inspection Fund (*Fundo de Fiscalização das Telecomunicações - FISTEL*) - The main FISTEL revenue sources are: Installation Inspection Fee (*Taxa de Fiscalização de Instalação - TFI*) and Functioning Inspection Fee (*Taxa de Fiscalização de Funcionamento - TFF*).

Also, administrative fees are applied by ANATEL to telecom authorisations requests.

- Billing requirements (Sec. 63 to 65 TKG).

REGULATORY TAXES AND FEES

The TKG regulates various fees (Part 12 of the TKG). Generally speaking, measures taken by BNetzA are associated with costs, including (but not limited to) the following:

- Frequency allocations and frequency usage (Sec. 223, 224 TKG),
- Number allocations (Sec. 223 (3) TKG),
- Preliminary proceedings at BNetzA (Sec. 226 TKG).

There might also be a fee for providers of universal services (voice communications, broadband internet access) to compensate the designated universal service provider if BNetzA appoints one (Sec. 163 TKG).

The TKG does not include telecommunications-specific tax requirements, but the general tax regulation also applies to telecommunications services (e.g., related to VAT).

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

Administrative sanctions in the case of breaches /contraventions of telecom laws and regulations include the following:

- Warnings;
- Fines;
- Temporary suspension of the authorisation granted by ANATEL regarding the telecom activity;
- Extinction of the authorisation granted by ANATEL regarding the telecom activity; and
- Temporary banning from participating in public bids.

ANATEL is responsible for the investigation of the breaches/contraventions and imposition of sanctions. The imposition of sanctions depends on a prior administrative proceeding in which the infracting party has a right of defence. Administrative sanctions are applied in addition to any civil and criminal sanctions.

The LGT defines the unlawful development of telecom activities as a crime.

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

BNetzA may issue orders to comply with the regulatory requirements. In cases of serious or repeated violations, BNetzA may even issue orders to prohibit the activity as an operator of telecommunications networks or provider of telecommunications services in Germany (Sec. 202 (3) TKG).

Non-compliance with the telecommunications regulatory requirements are administrative offences that can lead to administrative fines of up to 2 % of the yearly turnover of the company in some of the cases (Sec. 228 TKG). Some violations are even criminal offences that can lead to criminal fines or even imprisonment (e.g., Sec. 27 TTDSG).

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