

# TELECOMMUNICATIONS LAWS OF THE WORLD

Brazil vs France



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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.

## 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:



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).

- 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

### Agência Nacional de Telecomunicações

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

Website: [Anatel](http://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

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

## REGULATORY BODIES OR AUTHORITIES

### Autorité de Régulation des Communications Electroniques et des Postes - ARCEP

Address: 14 rue Gerty Archimède, 75012 Paris

[www.arcep.fr](http://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 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.

- 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.

### 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

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

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.

## 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

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;

## 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.

- A right to present claims against the Telecom Services provider before ANATEL and the 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.

## 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

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 CONTACTS



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## 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.

### KEY CONTACTS



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