

TELECOMMUNICATIONS LAWS OF THE WORLD

Brazil vs Italy



Downloaded: 3 September 2025

BRAZIL



Last modified 6 October 2022

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

ITALY



Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

Pursuant to art. 3 of the Italian Code of Electronic Communications (D.lgs. No. 259/2003), the provision of electronic communications networks and services - which is of primary general interest - is free. Communication providers need a general authorisation to operate in Italy, although they do not require an explicit measure in the form of an administrative decision.

This concept of general authorisation, formerly derived from the European Authorisation Directive (Directive 2002/20/EC), has been confirmed by the Directive (EU) 2018/1972, establishing the European Electronic Communications Code, which repealed Directive 2002/20/EC. Directive (EU) 2018/1972 has been implemented in Italy by means of the D.Lgs. No. 207/2021 which amended D.Lgs. No. 259/2003.

The provision of electronic communications networks and services in Italy is subject to a general authorisation whose effects are produced on the basis of a simple communication in the form of a notification to the Ministry of the Economic Development (hereinafter also the "**Ministry**"), rather than to the NRA.

The granting of specific rights is only limited in cases related to the use of insufficient resources (radio frequencies and numbers).

AGCom (*Autorità per le garanzie nelle comunicazioni*) is the Italian Communications Authority. It is an independent authority established under Law 249/1997. AGCOM retains both regulatory and supervisory functions (alongside the Ministry of the Economic Development) in the areas of telecommunications, media, publishing and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecoms sector in Italy is D.lgs. No. 259/2003, the Electronic

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.

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);

Communications Code ('Codice delle Comunicazioni Elettroniche', 'CCE'), as recently reshaped by the D.Lgs. No. 207/2021, which implemented Directive EU 2018 /1972 establishing the European Electronic Communications Code.

In addition to the CCE, the following legislation regulates specific areas related to the provision of communication services and the operation of communication networks:

- Law No. 249/1997, establishing the Italian Communication Authority (AGCom)
- D.lgs. No. 206/2005 (the Consumer Code)
- Detailed rules contained in [AGCom](#) Resolutions, including:
 - Annex A to Resolution 179/03/CSP, general directive on telecommunications services quality and charters and subsequent integrations
 - Annex A to Resolution 203/18/CONS, rules for the settlement of disputes between electronic communications operators and final users, as amended by Resolutions 353/19/CONS and Resolution 390/21/CONS and integrated by Resolution 193/22/CONS and Resolution 339/18/CONS
 - Annex A to Resolution 226/15/CONS, rules for the settlement of disputes between operators, as integrated by Resolution 449/16/CONS
 - Annex A to Resolution 410/14/CONS, rules on enforcement (sanctions) procedures, as amended by Resolution 581/15/CONS, Resolution 529/14/CONS and Resolution 451/20/CONS and integrated by Resolution 256/15/CONS and by AGCom Communication dated 25 September 2014
 - Annex A to Resolution 8/15/CIR, national Numbering Plan and implementation rules and subsequent integration and amendments

- 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).

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.gov.br)

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

Telecom Services Legal Definition

REGULATORY BODIES OR AUTHORITIES

Ministero dello Sviluppo Economico

Via Molise 2, 00187 Roma

Tel. (+39) 06.4705.1

www.mise.gov.it

urp@mise.gov.it; urp.comunicazioni@mise.gov.it

Autorità per le garanzie nelle telecomunicazioni Naples Headquarters

Centro Direzionale, Isola B5 - 80143 Napoli

Tel. (+39) 081.7507111

Rome Headquarters

Via Isonzo 21/b, 00198 Roma

Tel. (+39) 06.69644111

www.agcom.it

info@agcom.it

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

Electronic communication providers may be classified as providers of electronic communication networks and

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:

- 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.

providers of electronic communication services. There is an additional distinction between public and private use providers. Pursuant to the definitions included in the Directive (EU) 2018/1972 (and fully transposed in the CCE):

- 'Electronic communications network' means transmission systems, whether or not based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.
- 'Electronic communications service' means a service normally provided for remuneration via electronic communications networks, which encompasses, with the exception of services providing, or exercising editorial control over, content transmitted using electronic communications networks and services, the following types of services: (i) internet access service; (ii) interpersonal communications service; (iii) 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.

The broadening of the definition of “electronic communications service” – provided by the D.Lgs. No. 207/2021, implementing Directive (EU) 2018/1972 – with the explicit inclusion of interpersonal communications services, makes it possible to bring within the scope of the CCE communications services provided by over-the-top operators (OTT).

It is also worth noting that the CCE, as amended by D. Lgs. No. 207/2021, provides for a definition of “machine-to-machine communication service” which is relevant because “machine-to-machine” services are now subject to a partially differentiated regime, in particular regarding the “justice purpose obligations” and the end users’ rights.

Art. I CCE specifies that the following areas fall under the scope of CCE provisions:

- Electronic communication networks and services for public use, including radio and television broadcasting networks and cable television networks
- Closed groups of users
- Electronic communication networks and services for private use
- Protection of electronic communications subsea installations
- Radio spectrum service

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

Pursuant to art. II CCE, the provision of electronic communications networks or services is subject to a general authorisation, whose effects are produced by means of a simple communication to the Ministry of Economic Development. Such communication shall include the statement that the company will begin to provide electronic communications networks and/or services, as well as other additional information, such as: (a) the name of the provider; (b) the provider's legal status, form and registration number, where the provider is registered in a trade or other similar public register in the European Union; (c) the geographical address of the provider's main establishment in the European Union, if any, and, where applicable, any secondary branch in a Member State; (d) the provider's website address, where applicable, associated with the provision of electronic communications networks or services; (e) a contact person and contact details; (f) a short description of the networks or services intended to be provided; (g) an estimated date for starting the activity.

The communication represents a 'declaration of start of the activities'. Nevertheless, it is herein important to point out that - since the transmission of the communication - the company is immediately allowed to start its activity, without having to wait for any formal consent on part of the competent authority.

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:

The notification suffices for exercising the rights derived from the general authorization. Within 60 days from the declaration, in case of non-existence of the conditions and requirements necessary for the general authorization, the Ministry of Economic Development will prohibit the continuation of activity with a reasoned decision.

The general authorisation is required for the provision of all electronic communications networks and services in Italy. Such authorisation shall be obtained both for public and for private networks and services. However, a series of derogations (including the exceptions related to the use of spectrum) are prescribed for private networks and services, which might involve a differentiated authorisation system.

According to the amendments due to the implementation of the Directive (EU) 2018/1972, the Ministry of Economic Development shall send to the BEREC (Body of European Regulators for Electronic Communications) any requests for general authorization made by interested operators, to enable the BEREC to keep an EU register of the providers of electronic communications services and networks.

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Italy prior to or during the provision of services. Advice should however be sought from a tax perspective.

Art. 11 CCE clarifies that the provision of electronic communications networks or services is free (under art. 3 CCE), except for those specific restrictions introduced by regulations and administrative provisions prescribing a particular regime for non-EU or non-EEA companies, or which are justified by general interest objectives.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The operators may negotiate, among themselves, agreements on technical and commercial conditions for the access and the interconnection. AGCom has the duty

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

to ensure that there are no restrictions that may prevent interconnection and access agreements.

The operators authorised to provide electronic communications networks and services have the right and – when requested by other operators holding an authorisation – an obligation to negotiate among each other the interconnection for the provision of electronic communications services, in order to ensure the interoperability of services throughout the European Union. The operators shall offer the access and interconnection to other operators in compliance with the terms and conditions consistent with the obligations imposed by AGCom.

In exceptional circumstances, the Authority may impose on operators holding significant market power obligations to offer access and interconnection.

An operator established in another EU Member State requesting for access or interconnection in Italy does not need to be authorised to operate in Italy where it does not provide services or networks there.

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

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

A set of specific provisions aimed at safeguarding consumers' rights has been included both in the Consumer Code, laying down the general discipline, and in the CCE.

Art. 98-quater decies of the CCE and Annex 8 to the CCE provides for a list of compulsory information that should be included in contracts concluded with consumers or other final users, in particular:

- Name, address and contact information of the provider and, if different, the contact information for any complaint
- Information on the respective prices for activating the electronic communications service and for any recurring or consumption-related charges, where the service is provided for direct monetary payment
- With respect to internet access services, a summary of the information required pursuant to Regulation EU 2015/2120

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 consumer defence authorities; and
- A right to be indemnified for any damages caused by virtue of its users' rights violation.

- Any restriction on the provision of emergency services
- Information on the main characteristics of each service provided (including any conditions limiting access to or use of services and applications)
- The minimum levels of quality of the service offered
- The assurance services offered and the customer assistance provided, as well as the way to contact such services
- The inclusion of personal data in a directory and the categories of data stored
- Details on prices and tariffs, as well as the way according to which up-to-date information on all applicable tariffs, maintenance costs and payment systems may be obtained
- The duration of the contract, the conditions for renewal and termination of the single services and of the contract (including benefits from promotional terms and the charges due on termination of the contract, such as any cost recovery with respect to the equipment furnished)
- Any compensation which applies in case the level of quality of the service provided by the contract is not reached
- Information on dispute resolution

Furthermore, the CCE, as amended by the D.Lgs. No 207/2021, provides for an obligation on providers of publicly available electronic communications services, other than transmission services used for the provision of machine-to-machine services, to provide consumers with a concise, easily readable and free-of-charge contract summary – drawn up in a standard format – which includes the main elements of the information requirements. The contract summary plays a key role, since the contract will become effective when the consumer has confirmed their agreement after receiving it.

As for the duration of the contracts with consumers, the CCE, as amended by the D.Lgs. No 207/2021, provides that the contracts between consumers and providers of publicly available electronic communications services, other than number-independent interpersonal

communications services and other than transmission services used for the provision of machine-to-machine services, shall not exceed a commitment period longer than 24 months. In addition the CCE sets forth the obligation to offer to consumers at least one tariff option with a maximum initial duration equivalent to 12 months.

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

According to Annex 12 to the CCE, companies holding a general authorisation for the installation and provision of public communications networks - including those based on the use of radio frequencies - and companies holding a general authorisation for offering telephone services to the public (subject to some exception) are required to pay an annual contribution, also in the first year.

The effective amount of the contribution varies depending on the geographic area covered by the network or service. The different amounts are listed in Annex 12 to the CCE.

According to Annex 25 to the CCE, in order to gain a general authorisation for private use electronic communications networks and services, contributions shall be paid:

1. For the preliminary activities of the procedure, and
2. For the subsequent supervision, including checks and controls on the effective provision of the services and their related conditions

The contributions under point 2. are in the form of annual contributions and may not be divided.

The effective amount of such contributions varies depending on the different network or service provided. The different amounts are listed in Annex 25 to the CCE.

Additional fees may be charged with respect to specific categories of networks or services provided.

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

If the Ministry and/or AGCom, within their respective powers, ascertain the failure by a company to comply with one or more conditions prescribed in order to gain the general authorisation – or relating to the granting of rights to use radio frequencies and numbers – it may file an injunction to cease the breach and restore the previous situation to the company. If within the prescribed period the company does not remedy the infringement, the Ministry may levy a fine or impose other strict measures.

Pursuant to article 30 CCE, in case of installation and provision of electronic communications networks or services in the absence of a general authorisation, the Ministry may impose a fine from EUR 30,000 to EUR 2,500,000 for public use networks or services and from EUR 300 to EUR 3,000 for private use ones, to be determined in reasonable relation to the gravity of the offence.

Additional charges may be levied in case of breach of provisions on spectrum allocation.

KEY CONTACTS



Rafaella Chiachio

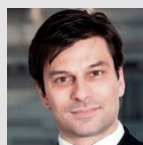
Partner

Campos Mello Advogados

T +55 11 3077 3529

rafaella.chiachio@cmalaw.com

KEY CONTACTS



Alessandro Boso Caretta

Partner

DLA Piper Studio Legale

Tributario Associato

T +39 06 68 880 502

alessandro.bosocaretta@dlapiper.com

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.