

TELECOMMUNICATIONS LAWS OF THE WORLD

Germany



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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*)
- BSIG: 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 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

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.

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

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, 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),
- 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

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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