

TELECOMMUNICATIONS LAWS OF THE WORLD

Spain



Downloaded: 3 July 2025

SPAIN



Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

The regulatory framework for electronic communications adopted by the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code was recently transposed to the Spanish legal framework (June 2022) by means of the Spanish General Telecommunications Act 11/2022 which supersedes the Spanish Telecommunications Act 9/2014 (in force since 9 May 2014). This main regulation is supplemented by various regulations which refer to, amongst others, the use of spectrum in Spain, frequency allocation, the obligations of electronic communication services providers or rights of end users.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Currently, the primary piece of legislation governing the telecoms industry in Spain is the [Spanish Telecommunications Act 9/2014](#) (the 'Spanish Telecommunications Act').

The following subordinate legislation may also impact the provision of communication services and the operation of communication networks:

- [The Spanish Royal Decree 424/2005](#), approving the rules on the conditions for the provision of electronic communications, universal service and consumers' protection
- [The Spanish Royal Decree 2296/2004](#), of 10 December, approving the Regulations on electronic communication markets, access to networks and numbering
- [The Spanish Royal Decree 899/2009](#), of 22 May, which approves the rights of the electronic communication services users
- The Spanish Royal Decree 123/2017, of 24 February, approving the Regulations on the use of the public radioelectric domain
- Order ETD/1449/2021 of 16 December approving the National Frequency Allocation Table

In addition to this, the following legislation may also impact the provision of communication services and the operation of communication networks:

- [General Data Protection Regulation](#) ('GDPR')
- [The Spanish Competition Act 15/2007](#) ('Spanish Competition Act')
- [The Spanish Royal Legislative Decree 1/2007](#) approving Consumer Protection Act ('Spanish Consumer Protection Act')

The key features of the Spanish Telecommunication Act are to:

- Protect recipients of communication services, making sure that telecommunication providers comply with the regulatory requirements set forth in the applicable regulations
- Ensure that telecommunication services are provided in a competitive market
- Ensure the principle of universal service, namely that affordable basic telephony services should be available to everyone

REGULATORY BODIES OR AUTHORITIES

The Spanish regulatory authorities for telecommunication matters are the Directorate for Telecommunications of the Spanish Commission for the Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* or the *CNMC*) and the State Secretariat for Telecommunications and Digital Infrastructures (*Secretaría de Estado de Telecomunicaciones e Infraestructuras Digitales*), part of the Ministry of Economic Affairs and Digital Transformation.

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

Under the Spanish Telecommunications Act, there are two types of telecommunications services providers:

- Providers of electronic communication services
- Providers of electronic communication networks

(together, the 'Services')

As detailed below, providing those Services is subject to having previously been registered before the Spanish Telecoms Operators Registry of the CNMC.

Telecommunication services are provided in Spain on the basis of free competition and, therefore, no prior license is required unless the company providing services requires the use of radio electric public domain (spectrum) for the effective provision of services. In this case, license/permits must be obtained from the Ministry of Economic Affairs and Digital Transformation covering the allocation of spectrum, the deployment of telecoms infrastructure and operations using such infrastructure.

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

As indicated before, successfully completing a registration process before the Spanish Telecoms Operators Registry is required prior to providing the Services in Spain. Besides being registered, an additional regulatory authorisation or licence is not requested unless the allocation of spectrum or the deployment of telecom infrastructure using such spectrum is required to provide electronic communication services.

By completing the registration process, any operator will be qualified as a 'telecommunication operator' in Spain, and shall be legally entitled to start providing the Services.

In order to successfully complete this registration process, certain administrative and technical documentation shall be submitted to the CNMC, as follows:

Administrative documentation

Application form: the legal representative signing this form shall be empowered to act on behalf of the company, as representative of the operator before the CNMC. A copy of the relevant Power of Attorney shall be attached to the application form.

Corporate information of the company that aims to be registered as a telecom operator: This includes the incorporation deed, Tax Identification Number, powers of attorney, etc. If it is not a Spanish company, all such documents shall be duly legalised, apostilled, and translated (sworn translation).

Technical information

Description of the network to be used including the following information:

- Brief description of the engineering and network design including:
 - Territorial coverage scope
 - Information on whether the network is owned by the operator or by others (wholly or partially)
 - Information on whether the network implementation requires the occupation of public domain or private property
 - Information on whether the network implementation requires the occupation of radio spectrum
 - Information on whether the network shall provide the support service for broadcasting services (radio/TV)
 - Explanatory block diagram to facilitate the description
- Type of technology or technologies that shall be used
- Security and confidentiality measures to be implemented in the network
- Confirming the particular type of communication network which is to be operated

Description of the service to be supplied:

- Functional description of the services including:
 - Complementary block diagram to facilitate the description of the services, including the technology that shall be used
 - Information on whether the network used is owned by the operator or by others. In the event that their own network is used, the technical documentation listed above (in 'description of the network to be used including the following information') shall be also submitted
 - Territorial scope of the provision of services

- Commercial information of the services to be provided
- Indicate the specific type of telecommunication services to be provided

The notification shall also include a statement from the operator's representative stating that the operator meets all legal requirements set forth in any applicable provisions.

In order to successfully complete this registration process, operators should be registered within 15 working days following CNMC's analysis of the documentation submitted by the operator. The CNMC will only be entitled to dismiss a registration request in the case where the operator has not provided the completed information requested.

After registration, the operator must communicate its intention to continue providing the registered services in Spain at the end of each 3 year period.

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

From a regulatory standpoint, it is not required to have a permanent establishment or legal residence in Spain in order to be registered in the Spanish Telecoms Operators Registry or being granted with the use of radio-electric public domain in Spain. Any entity located within the EU territory is entitled to be registered in the Spanish Telecoms Operators Registry (provided that the administrative and technical requirements described in [Registration / licensing](#) are met) and request the allocation of spectrum in Spain.

However, a legal representative in Spain should be designated for notification purposes.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection: The interconnection principle is set forth by the Spanish Telecommunications Act, establishing the right to have access to network resources in order to provide electronic communication services.

Roaming: Roaming regulations in Spain are provided by the Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union which renews the Regulation (EU) No 531/2012.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

In addition to the principles and obligations set forth in the Spanish Telecommunication Act, there are other regulations regarding consumer protection principles, which will also be applicable to telecommunication operators registered before the Spanish Telecoms Operators Registry and providing telecoms services involving consumers.

The main piece of legislation in Spain regarding consumer protection matters is the Spanish Consumer Protection Act.

It should be noted that the provisions and principles in connection with consumer protection (set forth in the Spanish Telecommunication Act) will prevail from the principles set forth in the Spanish Consumer Protection Act, which will only be applicable on a subsidiary manner.

Moreover, the Spanish Data Protection Law will also be applicable to operators responsible for collecting and processing the personal data of consumers in Spain, who will be considered data controllers.

REGULATORY TAXES AND FEES

General Operators' Fee

The registration with the CNMC entails the payment of this annual fee, based on the operator's gross revenues but limited to a maximum of one per thousand (1/1000) of the annual gross income generated by the operator.

Fee for Reservation of the Radio-electric Public Domain

This fee must be paid annually by the entity granted with the license on a pro rata basis according to the number of years for which the license has been granted.

The calculation of this fee is made by the Ministry using a formula contained in Law 22/2021, of 28 December, on the General State Budget for the year 2022: $T = [N \times V] / 166,386 = [S (km^2) \times B (kHz) \times F (C1, C2, C3, C4, C5)] / 166,386$. This formula applies several parameters:

- the degree of use and congestion of the different bands and in the different geographical areas;
- the type of service for which the reservation is intended to be used and, in particular, whether it carries public service obligations;
- the spectrum band or sub-band to be reserved;
- the equipment and technology to be used; and
- the economic value derived from the use or exploitation of the reserved public domain.

Telecommunications Fees

Finally, there are other minor fees to be satisfied as a consequence of the submission of: (i) applications to be granted with a license to use the radio-electric public domain, or (ii) applications to obtain the authorization to commence operations with telecommunications infrastructure. These fees **must be paid before sending the applications** described and attach the proof of payment to the formal application.

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

The infringement of the provisions of the Spanish Telecommunications Act may result in the imposition of fines by the State Secretariat for Telecommunications and Digital Infrastructures and/or CNMC to the entity as well as its directors/officers /representatives depending on the severity of the conduct:

- **Very serious infringements** can be sanctioned with fines amounting up to EUR 20 million and potential disqualification up to 5 years for the operation of electronic communications networks or the provision of electronic communications services. If the CNMC is competent to decide on the infringement, the fine can be up to five times the gross profit obtained from the infringement. In this case, fines for directors/officers/representatives can be up to EUR 60,000. In the case of very severe breaches, additional penalties such as the operator being disqualified from offering the Services in Spain for 5 years
- **Serious infringements** can be sanctioned with fines amounting up to EUR 2 million. If the CNMC is competent to decide on the infringement, the fine can be up to two times the gross profit obtained from the infringement. Fines for directors/officers/representatives can be up to EUR 30,000.
- **Minor infringements** can be sanctioned with fines amounting up to EUR 50,000. Fines for directors/officers /representatives can be up to EUR 5,000.

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