

TELECOMMUNICATIONS LAWS OF THE WORLD

Croatia



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CROATIA



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OVERVIEW OF LEGAL LANDSCAPE

The mainstay of the provisions regulating provision of telecommunication services in Croatia is the most recently adopted Croatian Electronic Communications Act (*Zakon o elektroničkim komunikacijama* – the "CECA") which transposes, among others, Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 (European Electronic Communications Code, the "**Code**").

The CECA regulates the field of electronic communications, in particular the provision of electronic communications networks and services, the provision of universal services as well as the protection of user rights. In addition, the CECA also regulates the construction, installation, maintenance and use of electronic communications infrastructure, related equipment and related services and certain features of terminal equipment.

CECA also sets out basic framework in respect of conditions of market competition and the rights and obligations of participants in the market of electronic communication networks and services, effective management of the radio frequency spectrum and address and number space, digital radio and television, data protection, security of electronic communication networks and services, as well as the performance of inspection supervision and control in electronic communications, the decision-making process and resolving disputes in electronic communications.

Apart from the CECA as the key and central legal act regulating telecommunications in Croatia, several implementing regulation providing more detailed regulation shall also be taken into account.

According to the CECA, the regulatory body competent for telecommunications' realm in Croatia is the Croatian Regulatory Authority for Network Industries (*Hrvatska regulatorna agencija za mrežne djelatnosti* – "**HAKOM**").

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Apart from the CECA, legal provisions pertaining to the regulation of telecommunications can be found in several acts of implementing regulation, among others:

- Croatian Ordinance on the manner and conditions of performing the activities of electronic communication networks and services (*Pravilnik o načinu i uvjetima obavljanja djelatnosti elektroničkih komunikacijskih mreža i usluga*);
- Croatian Ordinance on the allocation of addresses and numbers (*Pravilnik o dodjeli adresa i brojeva*);
- Various Croatian radio frequency spectrum allocation plans (*Planovi dodjele*);
- Croatian Ordinance on Electromagnetic Compatibility (*Pravilnik o elektromagnetskoj kompatibilnosti*);

- Croatian Ordinance on a single European number for emergency services (*Pravilnik o jedinstvenom europskom broju za hitne službe*);
- Croatian Ordinance on the method and deadlines for the implementation of measures to protect the security and integrity of networks and services (*Pravilnik o načinu i rokovima provedbe mjera zaštite sigurnosti i cjelovitosti mreža i usluga*);
- Croatian Ordinance on the manner and conditions of access and joint use of electronic communication infrastructure and other related equipment (*Pravilnik o načinu i uvjetima pristupa i zajednikog korištenja elektronike komunikacijske infrastrukture i druge povezane opreme*);
- Croatian Ordinance on the use of the radio frequency spectrum (*Pravilnik o namjeni radiofrekvencijskog spektra*);
- Croatian Ordinance on the payment of fees for performing the duties of the Croatian Regulatory Agency for Network Activities (*Pravilnik o plaanju naknada za obavljanje poslova Hrvatske regulatorne agencije za mrežne djelatnosti*);
- Croatian Ordinance on payment of fees for the right to use addresses, numbers and radio frequency spectrum (*Pravilnik o plaanju naknada za pravo uporabe adresa, brojeva i radiofrekvencijskog spektra*); and
- Croatian Ordinance on radio equipment (*Pravilnik o radijskoj opremi*).

Although the CECA has been enacted recently, the implementing regulation based on the previous laws is still in force and applicable. However, amendments to the implementing regulation (in view of aligning them with CECA) may be expected in the near future.

Key features of the CECA are:

- Establishing legal framework in respect of HAKOM and its powers and organisational matters.
- Regulating general authorisation which enables telecommunication services providers to provide such services as long as they meet the relevant criteria and notify HAKOM thereof.
- Providing consumer / end-user protection framework.
- Setting out basic requirements in respect of granting of frequencies, numbers and rights of way.
- Regulation of universal services.
- Stipulating legal rules pertaining to public security, telecommunications secrecy and data protection.

REGULATORY BODIES OR AUTHORITIES

The competent authority for telecommunications in Croatia is the Croatian Regulatory Authority for Network Industries.

Contact information:

Hrvatska regulatorna agencija za mrežne djelatnosti – HAKOM
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 10110 Zagreb
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 Website: www.hakom.hr

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

In general, the CECA regulates provision of activity of electronic communication networks and services (*djelatnost elektroničkih komunikacijskih mreža i usluga*) which is defined as installation, operation, management and commissioning of electronic communication networks and electronic communication infrastructure and related equipment as well as the provision of electronic communication services, according to Article 5 (1) No. 7 of the CECA.

In this respect, the CECA differentiates between (i) providers of telecommunications networks and (ii) providers of telecommunications services and lays down several requirements in respect of both types of entities.

The CECA also differentiates between public and private providers of the above activities (ie, telecommunications networks and services).

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

Generally speaking, the Croatian telecommunications legal system is based on the so-called general authorization for electronic communications networks and services (*opće ovlaštenje za elektroničke komunikacijske mreže i usluge*) which means that in principle, no license is required for provision of such services. Nonetheless, entities that wish to carry on licensable activities in the context of telecommunications should notify HAKOM thereof in advance. An entity may start carrying on such activities only upon notifying HAKOM in line with the applicable legal requirements (see Article 24 of the CECA).

Nonetheless, it shall be borne in mind that licensing requirements may apply on the basis of other regulation, for instance, frequency allocation etc. In addition, several requirements may apply from the perspective of companies law.

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

From the perspective of telecommunications legislation, entities providing telecommunication activities (ie, networks and services) are in principle not required to be domiciled in Croatia.

This notwithstanding, advice should always be sought from a tax and companies law perspective (which may in certain instances require establishment of local presence).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

There are several rules under Croatian pertaining to interconnection/roaming.

Article 59 (1) of the CECA stipulates that the installation and use of electronic communication networks as well as the provision of electronic communication services must meet the conditions of security of network use, network integrity and interoperability of electronic communication services.

According to Article 92 (3) of the CECA, operators of public communications networks have the right and – at the request of other authorized operators of public communications networks – the obligation to negotiate with each other on interconnection for the purpose of providing publicly available electronic communications services with the purpose of ensuring the provision and the interoperability of these services.

Furthermore, the CECA lays down several rules pertaining to HAKOM's powers in respect of interconnection, for instance, requiring public telecommunications network operators with significant market power to establish interoperability in different respects.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Apart from general consumer protection legislation that applies in Croatia (regulated by, among others, the Croatian Consumer Protection Act (*Zakon o zaštiti potrošača*)), the CECA also provides for a legal framework that protects consumers. In this respect kindly note that similar protection is granted also to other categories which are similar to consumers (for example, "end-users") which to some extent overlaps with the consumer protection framework under the CECA.

This includes in particular the following:

- information requirements towards the consumers;
- duration and termination of agreements entered into between consumers and telecommunications operators;
- number portability obligations; and
- several requirements with respect to disabled people end-users.

As per Article 5 (1) No. 54 of the CECA, a consumer is defined as any natural person who uses a publicly available electronic communication service or requires this service for purposes that are not intended for their business activity, trade or self-employed activity.

An "end-user" is defined as an user (ie, a legal or natural person who uses a publicly available electronic communication service or requests this service) who does not provide public electronic communication networks or publicly available electronic communication services, according to Article 5 (1) No. 33 and 34 of the CECA.

REGULATORY TAXES AND FEES

On the basis of the CECA (and the respective implementing regulation relating thereto), the following regulatory taxes and fees may apply (please note that the below list is not of exhaustive nature):

- general fees that need to be paid to HAKOM on the basis of operators' total annual gross income;
- fees pertaining to spectrum assignment;
- fees in relation to allocation of numbers; and
- fees in respect of use of public good and rights of way (*naknada za korištenje opeg dobra i nekretnina na temelju prava puta*).

Additionally, advice should always be sought from a tax perspective.

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

The CECA contains several provisions outlining powers that HAKOM has in order to ensure compliance of the telecommunications market players with the applicable regulatory framework.

Articles 169 et seq. of the CECA contain provisions relating to administrative misdemeanours. In case of breach of such provisions, fines may be imposed. In the most serious cases of breaches, such fines can range from 1% to a maximum of 10% of the value of the total annual gross income of the operator at hand. In other, less serious cases, fines of up to EUR 132.720,00 or EUR 66.360,00 may be imposed.

The CECA also foresees fines that can be imposed representatives of the corporate entities in question (ie, operators).

In addition, certain actions may under certain circumstances also constitute different types of criminal acts as defined in the Croatian Criminal Act (*Kazneni zakon*) and may result in criminal fines, including imprisonment.

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