

TELECOMMUNICATIONS LAWS OF THE WORLD

Italy



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ITALY



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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has been confirmed by the Directive (EU) 2018/1972, establishing the European Electronic Communications Code, which repealed Directive 2002/20/EC.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 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

REGULATORY BODIES OR AUTHORITIES

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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 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. 1 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

Pursuant to art. 11 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.

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 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

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
- 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

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.

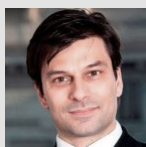
KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

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.

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