

TELECOMMUNICATIONS LAWS OF THE WORLD

Ukraine



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UKRAINE



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OVERVIEW OF LEGAL LANDSCAPE

The telecoms market is mainly regulated by the Law of Ukraine "On Electronic Communications" No. 1089-IX dated 16 January 2020 ("**Electronic Communications Law**") and subordinate documents of the National Commission for the State Regulation of Electronic Communications, Radiofrequency Spectrum and the Provision of Postal Services ("**NCEC**") and, for the time being, Administration of the State Service of Special Communications and Information Protection of Ukraine ("**Administration of SSSC**").

On 1 January 2022 the Electronic Communications Law entered into force and replaced the Law of Ukraine "On Telecommunications" as of 18 November 2003 No. 1280-IV ("**Telecom Law**") and the Law of Ukraine "On Radio Frequency Source of Ukraine" as of 01 June 2000 No. 1770-III ("**Law on RFR**"). The Electronic Communications Law aims to harmonize Ukrainian and EU legislation in telecom sector and implements the main provisions of the European Electronic Communications Code.

The secondary legislation in telecom sector setting various technical requirements, licensing procedures etc. has not been brought in compliance with the Electronic Communications Law yet.

The NCE is the state regulatory authority in the field of electronic communications, radio frequency spectrum and provision of postal services.

Administration of SSSC is an authority responsible for the development and implementation of state policy in the areas of special communications, information security, cybersecurity and telecommunications. It is planned that in six months following the end of the martial law (which is currently in effect till 23 August 2022, but is likely to be extended) the authorities of the Administration of SSSC with regard to electronic telecommunication policy will be transferred to the Ministry of Digital Transformation of Ukraine.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The regulatory framework for the Ukrainian telecom market is mainly established by Electronic Communications Law, which outlines the rights, obligations and liabilities of the market players, as well as regulates the usage of radio frequency spectrum.

In addition to the Electronic Communications Law, the following legislation (and subordinate legislation sitting underneath) also impacts the provision of communication services and the operation of communication networks:

- [Rules for Provision and Receipt of Telecommunications Services](#), approved by the Regulation of the Cabinet of Ministers of Ukraine as of 11 April 2012 No. 295;
- [Plan for Use of Radio Frequency Resource of Ukraine](#), approved by the Decree of the Cabinet of Ministers of Ukraine as of 09 June 2006 No. 815;

- [Basic Requirements to the Agreement on Provision of Telecommunications Services](#) approved by the Decision of NCCIR as of 29 November 2012 No. 624;
- [Procedure for Maintenance of the Register of Operators, Providers of Telecommunications](#), approved by the Decision of the NCCIR as of 1 November 2012 No. 560; and
- [License Terms and Conditions for Use of Radio Frequency Resource](#), approved by the Decision of NCCIR as of 19.08.2005 No. 53.

However, the abovementioned secondary legislation are outdated and still refer to the Telecom Law and/or the Law on RFR which are no longer in force. The NCEC and the Administration of SSSC are currently developing amendments to such regulations bring them into compliance with the Electronic Communications Law.

REGULATORY BODIES OR AUTHORITIES

The legal status and the authorities of the regulatory bodies are established by:

- the Electronic Communications Law;
- the Law of Ukraine "On the National Commission for the State Regulation of Electronic Communications, Radiofrequency Spectrum and the Provision of Postal Services" No. 1971-IX dated 16 December 2021;
- the Law of Ukraine "On the State Service of Special Communications and Information Protection of Ukraine" No. 3475-IV dated 23 February 2006; and
- the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the Administration of the SSSC" No. 411 dated 3 September 2014.

Cabinet of Ministers of Ukraine (CMU)

CMU is the government of Ukraine. Under the Electronic Communications Law the CMU is responsible for enforcement of state policy in the sphere of electronic communications and radiofrequency resource. The CMU coordinates ministries, approves the national plan of development of broadband telecommunication networks, approves and amends the radiofrequency spectrum plan, ensures proper conversion of the radiofrequency spectrum, approves the rules of provision of electronic communication services, determines the fees for radiofrequency licenses and develops other secondary legislation in the electronic communications sphere etc.

General Staff of the Armed Forces of Ukraine (General Staff)

General Staff regulates the usage of the radiofrequency spectrum by the special users (i.e. military users and other state bodies defined by the law). Among other things, the General Staff takes part in the development and approval of the radiofrequency spectrum plan, radiofrequency conversion plan, issues permits for the importation of radio electronic devices by special users etc.

NCE

NCE is a state body, which exercises powers of a licensing, regulatory and state controlling authority in the fields of e-communications, radio frequency spectrum and provision of postal services.

Among other things, the NCE has the following responsibilities:

- to exercise state supervision over the activities of providers of electronic communications services and networks;
- to administer various telecom registers (register of providers of electronic communications services and networks, radio frequency spectrum register, equipment register etc.) and an electronic regulatory platform;

- to regulate and to license the use of the radio frequency spectrum and to determine the terms and conditions of the licenses;
- to allocate, assign, and account for the numbering resource, to issue and withdraw permits, and supervise the use of the numbering resource;
- to define the relevant telecom markets, conduct an analysis of these markets, determine providers with significant market power and impose special regulatory obligations on them;
- to regulate cooperation between providers through network interconnection, including traffic transmission services;
- to carry out out-of-court settlement of disputes between consumers and/or providers, as well as out-of-court settlement of disputes over access to infrastructure.

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Administration of SSSC's main responsibilities include:

- Setting technical specifications to telecom networks; and
- Defining the list of technical means which may be used in public telecommunication networks.

Administration of the SSSC includes the National Centre for Operational and Technical Management of Telecommunications Networks, which is responsible for managing the telecommunication networks during the martial law or the state of emergency.

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

All legal entities and individuals involved in provision or consumption of electronic communication services, provision of or access to electronic communication networks, ensuring competition in the market, use of spectrum or numbering resource as well as protection of services users are subject to regulation under Electronic Communications Law.

The Electronic Communications Law defines the "*electronic communication network*" as a set of technical means of electronic communications and facilities designated for the provision of electronic communication services, and "*electronic communication service*" as a service where acceptance and/or conveyance of information is performed via electronic communications networks.

The list of electronic communication services was approved by the NCEC on 20 April 2022 and includes:

- internet access services;
- broadband Internet access service;
- interpersonal electronic communication services using numbering;
- interpersonal electronic communication service without the use of numbering;
- signal transmission service in electronic communication networks for inter-machine interaction;
- signal transmission services in electronic communication networks for IoT;
- signalling services in electronic communications networks for the provision of channels, VPNs, etc.

- signalling services in electronic communications networks for broadcasting;
- maintenance and operation of electronic communication networks and others.

The list is not exhaustive.

The Electronic Communications Law differentiates between the following market players:

1. operators of electronic communications ("**Operators**") – the business entities (i.e., legal entities and individual entrepreneurs) which operate and manage the electronic communication networks. In case of provision of electronic communication networks/services the operator is also considered to be a provider of electronic communication networks /services respectively;
2. providers of electronic communication services – the business entities which actually provide or have the right to provide electronic communication services on their own networks and/or on the networks of other providers;
3. providers of electronic communication networks – the business entities which provide services of access to electronic communication networks owned by them, as well as to the related equipment or using the virtual networks;
4. consumers and end users of electronic communication services; and
5. manufacturers, importers and/or other suppliers of technical means of electronic communications.

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

Activities in the field of electronic communications are carried out on the basis of general authorization, except for cases when the radio frequency resource and/or numbering resource is used.

Under the Electronic Communications Law business entities (i.e., legal entities and individual entrepreneurs) that intend to conduct activity as the providers of electronic communication services or networks ("**Providers**") shall submit to NCEC a notification on the commencement of activities in the area of electronic communications (in a form approved by NCEC) within a month following commencement of such activities. The NCEC shall add respective information to the Register of providers of electronic communication networks and services based on said notification.

If the Provider intends to use the radio frequency spectrum, then the Provider shall additionally obtain a license from the NCEC to use spectrum.

If the Provider intends to use the numbering resource, it shall obtain a permission from the NCEC to use the numbering resource.

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

Only residents of Ukraine – legal entities and private entrepreneurs – may be registered as providers of electronic communication services or networks.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Ukrainian telecom regulations provide for a number of technical, organisational and economic requirements regarding the interconnection between operators. Among other things, the requirements are as follows:

- Providers shall comply with the technical requirements established for electronic communication networks;

- Providers shall ensure the interconnection of electronic communication networks in all technically possible places with the bandwidth necessary for the quality provision of electronic communication services;
- Providers shall not create obstacles to interconnection;
- Interconnection is to be negotiated between the concerned operators according to the established procedure under law;
- Agreement on interconnection shall be in written form in accordance with the mandatory requirements for such agreements established by NCEC; and
- Economic conditions and tariffs for interconnection, as well as tariffs for traffic transmission services, are to be calculated in accordance with the procedure approved by NCEC.

NCEC may impose additional obligations on those providers recognized by NCEC as having significant market power, such as transparency, non-discrimination, and separate accounting/bookkeeping for certain interconnection activities.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Providers shall provide electronic communication services to consumers on the basis of an agreement. Such an agreement shall be concluded in accordance with the rules for the provision and receipt of electronic communication services, which are currently approved by the Decree of the Cabinet of Ministers of Ukraine dated 11 April 2012, No. 295. Since these rules were adopted on the basis of the Telecom Law that is no longer valid, it is expected that they will be amended to comply with the Electronic Communications Law.

Also, under the Electronic Communications, all consumers in Ukraine have the right to receive so-called “universal electronic communication services” of the quality established by the law and at the affordable price. The universal electronic communication services include fixed broadband internet access services and fixed voice communication services.

Moreover, the Electronic Communications Law obliges the Providers to:

- provide free of charge services of calling and connection with operational dispatch services that receive emergency calls;
- publish complete information about electronic communication services in an accessible format. Such information should be regularly updated;
- take measures to ensure stable functioning of electronic communication networks, which are used to provide electronic communications services in emergency situations, state of emergency and martial law.

Under the Electronic Communications Law, Operators/Providers are also obliged to protect data about:

1. a customer obtained as a result of conclusion of the agreement;
2. telecommunications services that the customer has obtained (the scope and volume of services, routes of data transmission, etc); and
3. data about the location of the customer's end user equipment.

Such data can only be transferred if required by the law or subject to the customer's prior written consent.

In addition, personal data protection requirements must also be complied with.

REGULATORY TAXES AND FEES

Taxes

Providers pay corporate profit tax (CPT), value added tax (VAT), personal income tax (PIT), unified social security contribution (USSC) and some other taxes and duties.

VAT

VAT is chargeable on the value of telecommunication services provided in Ukraine. The standard 20% VAT rate applies. VAT does not apply if services are rendered abroad,

CPT

Providers pay corporate profit tax at the standard rate of 18%. The CPT base should be determined as the financial result before tax for the reporting period adjusted by tax differences.

PIT

Providers must withhold personal income tax at the rate of 18% and military levy at the rate of 1.5% from the income payable to their employees.

USSC

USSC shall be paid by the Providers at the rate of 22% of the income payable to their employees. USSC is paid at the cost of the Operators and Providers of telecommunication services. Maximum USSC is set as 22% of 15 minimum salaries and is thus currently capped by USD 604 per month per employee.

Radio frequency rent

Those Providers which use radio frequency when rendering telecommunication services, and which obtained the respective authorisations, shall pay rent for their use of radio frequency. The base for rent payment is calculated by reference to radio frequency bandwidth. The rent shall be calculated by the Providers based on the fixed rate established in the Tax Code of Ukraine and which depends on the type of radio connection, radio spectrum and bandwidth.

Pension Fund duty

Those Providers which provide mobile communication services are liable for transferring to the budget a 7.5% Pension Fund duty calculated based on the value of mobile communication services. Duty is included in the price of mobile communication services and is paid by customers as part of the price.

Fees

Provision of electronic communication services

As mentioned above the Providers shall send the notification to the NCEC about the commencement of such activities in the area of electronic communications (in a form approved by NCEC) within a month following commencement of such activities. The NCEC shall add respective information to the Register of providers of electronic communication networks.

There is no fee for submission of such notification and for inclusion of the information into the Register.

Allocation of the numbering resource

Operators are obliged to pay a fee for the allocation of numbering resources. The amount of the fee depends on the type of numbering resource (e.g. the national identification code of the mobile communication network).

Use of radio frequency resource

Depending on the type of radio connection, range of radio spectrum and region of Ukraine, there are different fees for obtaining a licence for the use of radio frequency resource. In case the license is obtained via the auction, the fees/cost of obtaining such license may be higher.

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

Compliance by telecom market players with the requirements of telecommunications laws is controlled by NCEC by means of its inspections and review of regulatory reports submitted by Operators/Providers.

The Electronic Communications Law envisages the financial sanctions/penalties for the following offences:

| Offence | Sanction / Penalty |
|---|--|
| Carrying out activities in the field of electronic communications without submitting a notification about the commencement of activities or using the licensed radio frequency spectrum without a license | Confiscation of all proceeds received as a result of such activities (or a fine in the amount of approx. USD 4,600 in case it is impossible to determine the proceeds) |
| Non-fulfilment or improper fulfilment by the significant market power provider of regulatory obligations imposed on it based on the results of market analysis | A fine in the amount of 0,5% of revenue from activities which are subject to regulatory obligations |
| Non-disclosure or provision of false reports or other information required by the Electronic Communications Law | A fine in the amount from approx. USD 450 to USD 2,300 |
| Violation of the traffic routing procedure or use of the numbering resource without permission | A fine in the amount of approx. USD 4,600 |
| Violation of the requirements for provision of electronic communication services to consumers | A fine in the amount from approx. USD 450 to USD 2,300 |
| Failure to comply with an order to eliminate violations of legal requirements, unmotivated refusal to conduct an inspection, failure to provide documents and information necessary for state supervision | A fine in the amount from 0,5% to 0,3% of revenue received in the last reporting year preceding the year in which the fine is imposed, or a fine in the amount from approx. USD 1,400 to 4,600 |
| Failure to comply with the requirements of officials of NCEC to eliminate radio interference | A fine in the amount of approx. USD 900 |

The repeated commitment of the above offences may lead to increases of the amounts of the fines.

Amounts of collected administrative and economic sanctions are transferred to the State Budget of Ukraine.

Also, in case of significant incompliances of Provider's business activity with regulatory requirements NCEC may exclude the Provider from the Register, annul the license(s) for the use of the radio frequency spectrum and/or permit(s) for the use of the numbering resource (e.g., incompliance with the orders of the National Centre for Operational and Technical Management of Telecommunications Networks, unauthorized transfer of the radiofrequency license, repeated offences etc.).

KEY CONTACTS

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