

# The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2008

A practical insight to cross-border Telecommunication Laws and Regulations



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# Romania



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### 1 Framework

#### 1.1 When did Romania first liberalise telecommunications networks and/or services?

Romania first issued the legislative acts allowing the liberalised provision of several telecommunications services in 1990, as part of the transition to market economy.

#### 1.2 Has Romania fully implemented the EU 2003 regulatory framework? If Romania has not fully implemented the new regulatory framework, have proceedings been brought against Romania by the European Commission and if so, for which contraventions?

Romania has implemented the current EU regulatory framework in the electronic communications sector. However, the European Commission has sent a letter of formal notice for non-communication of transposition measures as regards the Universal Service Directive.

#### 1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

The main Romanian primary legislation in the electronic communications sector comprises the following legislative acts:

a) Government Emergency Ordinance no. 79/2002 on general regulatory framework for communications, dealing with:

- general authorisation of electronic communications networks and services;
- management of radio spectrum and numbering resources, rights of use;
- rights of way;
- market analyses and imposition of remedies to providers with significant market power (SMP);
- dispute resolution between undertakings;
- consultation, transparency and information mechanisms; and
- enforcement powers of the national regulatory authority.

b) Government Ordinance no. 34/2002 on access to public electronic communications networks and associated infrastructure, and interconnection thereof. Government Ordinance no. 34/2002:

- establishes rights and obligations of undertakings concerning access and interconnection;
- empowers the regulatory authority to impose ex-ante obligations on wholesale markets; and

- sets out sanctions for non-compliance.

c) Law no. 304/2003 on universal service and users' rights relating to electronic communications networks and services, setting out:

- the services within the scope of universal service and their main features, the responsibilities of public authorities in ensuring universal service, the mechanism of compensation of the net cost of universal service;
- the ex-ante obligations that may be imposed on retail markets;
- the specific rights of end-users in relation with providers of electronic communications networks and services and the corresponding obligations thereof; and
- sanctions for non-compliance.

d) Law no. 506/2004 on processing of personal data and protection of privacy in the electronic communications sector, providing for specific rules regarding the protection of privacy in the electronic communications sector, in relation to:

- confidentiality of communications;
- processing of traffic and location data and itemised billing;
- directories of subscribers;
- unsolicited communications; and
- sanctions for non-compliance.

e) Government Emergency Ordinance no. 134/2006 on establishment of National Regulatory Authority for Communications and Information Technology (ANRCTI), which sets out:

- basic rules regarding the establishment, organisation and functioning of ANRCTI; and
- the role, functions, objectives and powers of ANRCTI as regards the regulation of the electronic communications sector.

#### 1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national competition authority (where different).

Several public authorities have responsibilities in the electronic communications sector. The most important are:

- a) Ministry of Communications and Information Technology, with the main responsibility of issuing the policy and strategy for the development of the sector. The Ministry of Communications and Information Technology also issues the National Frequencies Allocation Table.
- b) ANRCTI, the national regulatory authority for the electronic communications sector, with the necessary regulatory powers on issuing secondary legislation and implementation of the primary and secondary legislation.
- c) Competition Council, the national competition authority

dealing ex-post with competition issues in all the sectors of economy, including electronic communications sector.

**1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?**

According to the relevant legal provisions, ANRCTI is mainly responsible for:

- Regulating market entry in the electronic communications sector - ANRCTI sets out the general authorisation regime, receives the notifications sent by the persons intending to enter the market, and keeps the official register of the authorised providers.
- Regulating the use of radio spectrum and numbering resources - ANRCTI ensures the management of radio spectrum and numbering resources by issuing the National Numbering Plan, issuing regulations for the use of radio spectrum and numbering resources and granting licenses.
- Creating the conditions for the development of a sustainable competition - ANRCTI is responsible for the identification of the relevant markets within the electronic communications sector and conduct of market analyses with a view to assess the status of competition, designation of the undertakings with SMP, and imposition, amendment or withdrawal of specific ex-ante obligations on SMP undertakings.
- Ensuring the implementation of the universal service in the electronic communications sector - ANRCTI establishes the designation procedure, designates the universal service providers, sets out their obligations related to the provision of the universal service, and the mechanism for compensating the net cost of the universal service provision.
- Maintaining market discipline and resolving disputes - ANRCTI is responsible for supervising and controlling the compliance with the primary and secondary legislation and the licences. ANRCTI is also empowered to solve disputes between providers of electronic communications networks/services in relation to their obligations under the regulatory framework, as well as between end-users and providers.

**1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?**

Providers of electronic communications networks/services are authorised under the general authorisation regime.

Any person intending to provide public electronic communications networks/publicly available electronic communications services under the general authorisation regime must only send a notification in this respect to ANRCTI for the purpose of keeping and updating a register of the providers of electronic communications networks/services.

The notification should be made on a standard form, accompanied by the documents proving the legal status of the person intending to provide electronic communications networks/services and a description of the networks/services to be provided.

**1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?**

The providers of electronic communications networks/services

must also comply with general competition law and legislation from other fields of activity.

**1.8 How and to what extent is content delivered over electronic communications networks regulated and by whom?**

The content of radio and television programmes is under the supervision of the National Audiovisual Council.

There is no other specific regulatory authority with broad responsibilities regarding content delivered over electronic communications networks. ANRCTI has some limited powers in relation to pornographic content delivered over the Internet.

**1.9 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?**

Market analyses conducted by the national regulatory authority were finalised prior to 1st of January, 2007, when Romania became a member of the European Union. Thus, no market analysis was notified to the European Commission up to date. The first market analyses to be notified to European Commission are expected until the end of year 2007.

**2 Licensing**

**2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process and timescales.**

Should the procedural requirements related to notification mentioned above at question 1.6 are complied with, starting from the estimated date for commencing the activity, declared in the notification standard form, the notifying person is authorised to provide electronic communications networks/services under the general authorisation regime.

Within 7 days from receiving a duly completed notification ANRCTI issues a standard certificate, with the sole purpose to ascertain that the notifying person is authorised to provide the electronic communications networks/services mentioned in the notification.

**2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?**

Beside the general authorisation, Government Emergency Ordinance no. 79/2002 provides for the requirement to obtain a spectrum licence, in case the provision of electronic communications networks/services involves the use of radio spectrum, and a numbering licence, for the use of numbering resources.

**2.3 May licences or other authorisations be transferred and if so under what conditions?**

The rights under the general authorisation regime are not transferable by agreements between living persons. The spectrum licence and numbering licence may be transferred with the approval of ANRCTI and provided that the transfer does not impede, distort or restrict competition.

**2.4 What is the usual or typical stated duration of licences or other authorisations?**

The rights conferred by the general authorisation regime are granted for unlimited period. The duration of numbering licenses is of 10 years and the regular term for radio spectrum licenses is of 5 years. However, the durations mentioned above are not applicable for licences issued further to competitive or comparative selection procedures, where the durations are set out individually for each case.

**3 Public and Private Works**

**3.1 Are there specific legal or administrative provisions dealing with access to public and private land in order to install telecommunications infrastructure?**

The legal regime for rights of way is provided for by Government Emergency Ordinance no. 79/2002. All providers of electronic communications networks have the right to install, maintain, replace, or move any elements of the electronic communications networks, on, above, in, or under the public property of the state or of the administrative units or the private property provided that certain specific conditions, related to feasibility of the access, restriction of property use, compliance with relevant legislation on town planning, construction works, environment, public health, are met.

**3.2 Do any specific rules exist which assist in securing or enforcing rights of way over public or private land, for the installation of network infrastructure?**

The rights of way are granted further to a request of the interested provider sent to the property owner. If an agreement is not reached within 4 months since the date of starting the negotiations, the interested party may bring proceedings in front of the competent court of law, which has the power to issue a decision standing for a contract between the parties and governing the terms and conditions for the enforcement of the rights of way.

**3.3 Is there a specific planning or zoning regime that applies to the installation of network infrastructure?**

The powers and responsibilities regarding town planning belong to local authorities. Thus, specific rules for the installation of network infrastructure may be set out by the local authorities, depending on the particularities of each administrative unit.

**3.4 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables?**

According to art. 25 of Government Emergency Ordinance no. 79/2002, an operator performing installation works on public or private property must allow another operator of electronic communications networks to use the facilities built or used by the former operator provided that:

- a) the conditions necessary for the latter operator to benefit from their own rights of way are not met or enforcing their own rights of way would imply non-proportional expenses;
- b) the installation works may be performed by the latter operator by using the same facilities, under conditions at least as convenient as those which may be ensured by using other similar facilities installed by the latter operator;

- c) the shared use does not technically affect and does not additionally burden the performance of the works by the former operator or of the activities regarding the provision of electronic communications networks; and

- d) the shared use of the facilities does not require major additional installation, construction or refurbishing works.

The obligation to share facilities and the terms and conditions of such obligation are imposed by ANRCTI.

**4 Access and Interconnection**

**4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?**

All operators have a general obligation to negotiate interconnection agreements and some operators (mainly SMP operators) have the obligation to conclude access/interconnection agreements under certain conditions. ANRCTI has the power to mandate access / interconnection.

The sole legal prerequisite for a person to qualify for interconnection is to be an authorised provider of public electronic communications networks.

**4.2 How are interconnection or access disputes resolved? Does the national regulatory have jurisdiction to adjudicate and impose a legally binding solution?**

ANRCTI has the power to solve disputes between providers of electronic communications networks/services related to access/interconnection. The decision of ANRCTI in this respect is binding. However, it may be challenged in front of the Bucharest Court of Appeal - Administrative Chamber.

**4.3 Are charges for interconnection and/or network access subject to price or cost regulation and, if so, how?**

Interconnection rates charged by several SMP operators: S.C. Romtelecom S.A. (Romtelecom) - fixed incumbent, S.C. Vodafone Romania S.A. (Vodafone) and S.C. Orange Romania S.A. (Orange) - mobile operators are cost-oriented and regulated by ANRCTI based on costing models. ANRCTI also regulated the interconnection rates charged by an alternative fixed telephony operator, S.C. RCS&RDS S.A. (RCS&RDS), based on the rates charged under normal commercial conditions.

Apart from that, ANRCTI has the general power to set out the technical and commercial conditions of access and interconnection, including the tariffs.

**4.4 In the local loop are existing owners of access infrastructure required to unbundle their facilities and if so, on what terms or regulatory controls?**

Mandatory access to the local loop has been imposed to Romtelecom, as SMP operator. Romtelecom has the following obligations in relation to access to the local loop:

- a) to offer unbundled access to the local loop to any interested provider on non-discriminatory conditions;
- b) to publish a Reference Unbundling Offer;
- c) to keep separate accounting; and
- d) to charge cost-oriented tariffs.

**4.5 How are existing interconnection and access regulatory conditions to be applied to new network technologies such as so-called next generation networks or IP-based networks?**

Romtelecom has been designated as an SMP operator and has the obligation to publish a Reference Interconnection Offer and a Reference Unbundling Offer. ANRCTI has the power to impose amendments to the reference offers.

The existing regulations took into account the current network structure of Romtelecom (PSTN). Thus, in case of changes in the network structure the related regulatory issues should be amended.

**5 Price and Consumer Regulation**

**5.1 Are (i) retail or (ii) wholesale price controls imposed on any operator in relation to fixed, mobile, or other services?**

Retail price controls are imposed only on Romtelecom for access and call services.

As we mentioned in questions 4.3 and 4.4, wholesale price controls are imposed on Romtelecom for interconnection (including interconnection for leased lines-terminating segments, carrier selection and pre-selection), and unbundling of the local loop. The voice interconnection rates charged by RCS&RDS, Vodafone and Orange are also regulated by ANRCTI.

**5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?**

Law no. 304/2003 provides for that the contracts concluded between the providers of electronic communications services and end-users must contain a minimum set of clauses.

The providers of public telephone networks/publicly available telephone services must also offer transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services.

**5.3 Are there any rules governing use and retention of customer call information?**

The use and retention of customer call information, such as traffic and location data, is allowed only subject to certain conditions. Traffic data must be erased or made anonymous when it is no longer needed for the purpose of transmitting a communication. However, they may be processed for subscriber billing and interconnection payment purposes but no longer than 3 years of the date the respective obligations were due. Another exception refers to the processing of data with the purpose of marketing electronic communications services or for the provision of value added services, but with the consent of the user to whom the data relates. Almost similar exceptions are provided for location data.

**6 Numbering**

**6.1 How are telephone numbers and network identifying codes allocated and by whom?**

The use of numbering resources by providers of publicly available telephone services is allowed further to granting of a numbering

licence by ANRCTI. The numbering resources are allocated on request of the interested provider, within 3 weeks from receiving a duly completed application.

ANRCTI also grants signalling point codes (national and international) used for adequate signalling between the networks. The signalling point codes are granted by ANRCTI within 3 weeks from receiving a duly completed application.

ANRCTI is also empowered to set out the procedure and to grant other network identifying codes.

**6.2 Are there any special rules which govern the use of telephone numbers?**

National Numbering Plan and other decisions of ANRCTI regulate the use of numbering resources mainly with respect to their destination (fixed telephony, mobile telephony, access to Internet, other services). The providers must comply with the destination of the numbering resources when providing their services.

**6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?**

Currently, Romanian legislation does not allow direct assignment of the telephone numbers by the regulatory authority to the end-users. Telephone numbers are granted to the providers of publicly available telephone services and they assign individual numbers to their customers under the contracts entered into.

**6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile).**

The primary and secondary legislation contemplate the right of end-users to port their telephone numbers (fixed or mobile) between two providers. End-users will not pay for the porting of their numbers but the costs incurred by the provider from whom the number is ported are recovered from the provider to whom the number is ported and they can not exceed EUR 13 for each fixed telephone number or for each non-geographical number, other than those used for mobile telephony services, and EUR 11 for each mobile telephone number.

However, number portability shall be implemented after the approval by ANRCTI of detailed technical and commercial terms and conditions.

**7 Fees**

**7.1 What fees and levies are payable and to whom with respect to the grant of a licence or other authorisation for the installation or use of network infrastructure or the provision of communication services?**

Providers of electronic communications networks/services do not pay any fee on authorisation.

Providers of public electronic communications networks/publicly available electronic communications services pay to ANRCTI an annual monitoring fee calculated as a percentage of their turnover. The percentage is the ratio between the general estimated expenses of ANRCTI covered by the monitoring fee and the total turnover of the authorised providers, but, in any case, it cannot exceed 0.4%.

Providers with a turnover less than EUR 100,000 are exempt from the obligation to pay the monitoring fee.

## 8 Submarine Cables

- 8.1 What are the main rules governing the bringing into Romania's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The territorial waters of Romania are part of Romanian national territory. Thus, general legislation on the importation and transportation of goods within Romanian territory is applicable.

There are no special requirements in relation to submarine cables.

## 9 Radio Frequency Spectrum

- 9.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

ANRCTI is the regulatory authority for radio spectrum.

- 9.2 In the grant of spectrum rights are distinctions made between mobile, fixed and satellite usage?

Usually such distinctions are made through the National Frequency Allocation Table in relation to the destination of radio spectrum. In this case the procedure for granting spectrum licences and the granting of the licences must comply with the specific mentioned destination. Otherwise, such distinction should not be made.

- 9.3 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

In principle, a spectrum licence is necessary for transmitting and receiving signals from and by satellite earth stations.

- 9.4 How is the use of radio frequency spectrum authorised in Romania? Do the procedures available include spectrum auctions and comparative selection of candidates?

In principle, spectrum licences are granted further to individual requests of providers of electronic communications networks. However, there are several frequency bands for which the right of use is granted further to competitive or comparative selection procedures.

- 9.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The legal provisions allow for the use of radio spectrum without a licence. The frequency bands used without a licence are set by ANRCTI if technically feasible and, in particular, if the risk of interference is low.

- 9.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Providers of electronic communications networks using radio spectrum must pay spectrum fees to ANRCTI. Spectrum fees are set by ANRCTI and are calculated in relation to various criteria, such as the number of channels assigned, the number of frequency bands, the number of earth stations for satellite services, the area of providing services (national, regional, local).

Beside spectrum fees, if the licences are granted further to competitive or comparative selection procedures, the winners must pay licence taxes to the State Budget. The amounts of the taxes are to be decided by a Government Decision for each procedure.

- 9.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

As we mentioned in question 2.3, spectrum licences may be transferred in whole to an authorised provider with the approval of ANRCTI and provided that the transfer does not impede, distort or restrict competition.

Sub-licensing is not allowed.

## 10 Interception

- 10.1 What are the essential rules applicable to the interception of messages, traffic data and other call records? Which rules apply to the retention of such call data, and over which period(s)?

The interception of phone conversations and other communications made through electronic communications means is made by the prosecutors or the judicial police officers for the purpose of conducting criminal investigations. The interceptions are made only subject to prior authorisation by the judge, on request of the prosecutor.

On the other hand, Romanian legislation does not provide for the mandatory retention of traffic or location data. Traffic and location data may be retained and processed without user's consent for subscriber billing and interconnection payment purposes, as mentioned at question 5.3 above.

## 11 The Internet

- 11.1 Are services over the Internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the Internet at a wholesale and/or retail level?

The only specific wholesale regulation relates to shared unbundled access to the local loop operated by Romtelecom. Romtelecom must offer shared access to the interested providers in order for them to be able to provide retail Internet access services using Romtelecom's local loops.

There is no specific retail regulation of the Internet access services.

- 11.2 Are there any rules to prevent, restrict or otherwise govern Internet or email communications, in particular, marketing and advertising communications?

Unsolicited commercial communications via e-mail are generally prohibited. They are allowed only with the consent of the receiver or if a natural or legal person obtained from its customer its electronic mail address the same natural or legal person may use the electronic contact details for direct marketing of its own similar products or services provided that the customer is given the opportunity to object to such use.

**12 USO**

**12.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

Law no. 304/2003 defines universal service as a minimum set of services, available at a certain quality level to all end-users, independently of geographical location and at an affordable price.

Universal service comprises:

- a) provision of access to public telephone network, at fixed locations;
- b) directory enquiry services and subscribers' directories; and
- c) public pay phones.

As regards the first service, the provision of access to public telephone network, at fixed locations, it has been ensured by two means:

- installation and operation of tele-centres in rural localities without, or with very limited, fixed access (through negative tender procedures); and
- granting subsidies to low-income users.

Only the measures regarding tele-centres are further implemented.

The second service has not been implemented yet by ANRCTI.

The implementation of the third service included within the scope of universal service, regarding the provision of public pay phones, has just started. Public pay phones are to be installed and operated in a manner similar to tele-centres under the supervision of ANRCTI.

The net cost incurred by the provision of universal service is compensated by contributions of providers of public electronic communications networks/publicly available telephone services with an annual turnover higher than EUR 3,000,000. However, at present, there is no decision of ANRCTI setting out the amount to be paid by eligible providers.

**13 Foreign Ownership Rules**

**13.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

There are no rules restricting foreign ownership interests in electronic communications companies.

**14 Future plans**

**14.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

The expected amendments to the primary legislation in the electronic communications sector relate to the transposition of Directive 2006/24 of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC into Romanian legislation.

The most important amendments of the regulatory measures would refer to the imposition by ANRCTI of specific obligations regarding mandatory interconnection and price controls to other fixed telephony operators than Romtelecom, designated as having SMP, to the introduction of fees for the use of numbering resources, to be paid by the holders of numbering licences, to the closing of the National Numbering Plan, and to the implementation of the universal service obligations on directory enquiry services and subscribers' directories.



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