

ACCESS TO ELECTRONIC COMMUNICATIONS INFRASTRUCTURE

September has brought a novelty concerning the access to the electronic communications infrastructure: the approval by the Ministry of the Environment of Decree-Law 258/2009, of 25th September.

This Decree-Law strengthens the regime of open access to the infrastructures of electronic communications which are capable of housing networks of electronic communications, thereby broadening the range of entities which are subject to the obligations of access and information on infrastructures. Such regime aims at allowing a better and more efficient access, which in turn aims at enabling the implementation of the new generation networks.

In fact, the next generation networks have been playing a central role both at national and EU policies level. The next generation is simply the "following generation", that is, networks which ensure a transmission capacity which is greater than the current one, which allow free access by the users to the competitor networks and to services of its choice and which support a generalized mobility.

Indicating a clear focus on preventing the monopolisation of infrastructures by a single operator as well as on lessening the barriers to the installation of next generation networks, the amendments brought by this Decree-Law concern mainly the access to infrastructures, by extending to other entities the obligations of access to the infrastructures, obligations which already existed under the previous

legislation. In fact, under the previous legislation, the obligations regime used to apply to public sector entities only (State and similar entities), namely the State, Autonomous Regions, Local Authorities, entities which are subject to the authority or superintendence of the State Organs, Autonomous Regions or Local Authorities and entities which detain or exploit infrastructures of public domain. With the approval of Decree-Law 258/2009 such regime now also applies to the companies of electronic communications and entities holding infrastructures which are capable of housing networks of electronic communications and which are used by the companies of electronic communications. Therefore, such entities are now subject to several provisions in this subject, including:

(i) Provisions concerning the construction and enlargement of infrastructures which are capable of housing networks of electronic communications. For example, the above mentioned entities are now

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Therefore, and in general, one can conclude that the legislator has pointed out in the direction of allowing a broader, efficient and non-discriminatory access to the infrastructure, in order to ensure that it is easier for the operators to expand themselves, thereby promoting the implementation of the next generation networks.

subject to the obligation of establishing regulations containing the procedures to the granting of rights of way in public domains; the obligation of displaying such regulations in the centralized information system ("SIC"); making public the intention of performing works which make viable the construction and enlargement of this type of infrastructures; settling and keeping up to date the technical conditions applicable to the construction and enlargement of these infrastructures;

(ii) Provisions concerning the access to infrastructures which are capable of housing networks of electronic communications. The entities which were mentioned above are now subject to the obligation of granting access to the infrastructures which they detain or which they manage, under the same terms as the public sector entities. Therefore, and as means of example, they are prohibited to use exclusively such infrastructures and they can only refuse access under very strict conditions; they are also obliged to provide information to the ICP-ANACOM

about the infrastructures; and of making public the proceedings and access conditions;

(iii) Centralized Information System (SIC): the entities mentioned above are obliged to keep up-to-date records of the infrastructure through the SIC system. This allows ICP-ANACOM to monitor the compliance of the applicable rules; they are also obliged to answer to information requests in a swift and non-discriminatory way; and they are subject to the remaining rules in this area which previously would only apply to public sector entities.

Therefore, and in general, one can conclude that the legislator has pointed out in the direction of allowing a broader, efficient and non-discriminatory access to the infrastructure, in order to ensure that it is easier for the operators to expand themselves, thereby promoting the implementation of the next generation networks. We now wait with expectation to see how such operators will in practice use the newly established legal regime.

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