

# 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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## 1 Framework

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

The Bulgarian telecommunications market was liberalised on 1 January 2003.

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

Recently adopted Law on Electronic Communications (published in State Gazette issue 41 of 22 May 2007, the “LEC”) transposes the principles set out in the EU 2002 regulatory framework. The full implementation of the new regulatory framework will be accomplished upon adoption of the requisite secondary legislation.

### 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.

In addition to the directly applicable EU law, the relevant Bulgarian legislation consists of primary legislative acts including the Constitution of the Republic of Bulgaria, the LEC, the Law on Personal Data Protection, the Law on Protection of Competition, the Law on Technical Requirements to Products, as well as of a number of pieces of secondary legislation, adopted by the national regulatory authority - the Communications Regulatory Commission (the “CRC”), or by other competent bodies.

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

Governmental policy in the telecoms sector shall be implemented by the Council of Ministers, the National Radio Frequencies Spectrum Council and the Chairman of the State Agency for Information Technologies and Communications. The CRC, an independent state body, is vested with the specific powers to regulate and control the compliance of provision of electronic communications with the applicable law. The primary responsibility for enforcement of the competition rules in Bulgaria falls within the competence of the national competition authority.

The CRC and the Bulgarian competition authority shall act in coordination and cooperation.

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

The CRC is vested with the powers, among others, to (i) determine the relevant markets of electronic communications networks and/or services subject to regulation under the LEC, (ii) investigate, analyse and evaluate the level of competition on the relevant markets, and (iii) determine the SMP undertakings and impose, amend or revoke specific obligations on those undertakings. The CRC may also impose the provision of the universal service, and, as an exception, well-grounded and proportional temporary specific obligations where such are provided for by law. The CRC is the authority competent to issue, amend, supplement, transfer, suspend, terminate or revoke permits for use of a scarce resource. The CRC has the power to (i) resolve disputes between undertakings, providing electronic communications, and (ii) review claims submitted by end-users in a limited number of cases envisaged in the LEC. The CRC maintains mutual cooperation with the national regulatory authorities of the other EU member states and with the European Commission in order to procure the development of consistent regulation practices and implementation of the EU law.

### 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?

The LEC implements the principles of the Authorisation Directive (2002/20/EC) and sets out that public electronic communications services shall be provided freely following a submission of a notification to the CRC, unless individually allocated scarce resource is required. In the latter case, electronic communications networks and services may only be provided upon the issuance of a permit by the CRC allowing the use of the respective scarce resource (e.g. radio frequencies, positions of the geostationary orbit, numbers from the National Numbering Plan).

### 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?

Notwithstanding the sector specific supervision exercised by the

CRC, all undertakings providing public electronic communications services shall comply with the rules prohibiting anti-competitive agreements and practices and abuse of dominant position (e.g. Art. 81 and Art. 82 ECT, and the respective mirror provisions of Bulgarian Law on Protection of Competition).

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

In compliance with the Framework Directive (2002/21/EC) transmission is regulated separately from content and thus the rules governing the provision of electronic communications and media are stipulated in two laws (the LEC and the Law on Radio and Television, respectively) and controlled by two distinctive state bodies - the CRC and the Council on Electronic Media (“CEM”).

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

Due to the fact that the EU 2002 regulatory framework has just recently been transposed into Bulgarian legislation, none of the markets have been notified to the European Commission yet.

## 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.**

As the radio frequency spectrum is a scarce resource, rights of use for individually allocated radio frequency spectrums are granted by a permit issued by the CRC. (See also question 1.6 and question 9.4.)

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

The undertakings providing electronic communications network and/or services shall also comply with the requisite construction permits. (See also question 3.3.)

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

Pursuant to the LEC an undertaking that has been issued a permit for use of a scarce resource may transfer such permit or part of the rights and the corresponding obligations set forth therein only upon receipt of a prior CRC approval. The CRC shall issue such an approval if the contemplated transfer shall not negatively affect the competition or lead to changes in the conditions for use of the scarce resource. The permit itself may contain transfer restrictions aimed at better protecting the competition on the respective market.

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

A permit for use of a scarce resource is granted for an initial period of up to 20 years with a possibility for extension for up to 10 more years. The general authorisation is not limited in time and an undertaking operating under such authorisation may terminate the

provision of public electronic communications networks and/or services upon submission of a notification to the CRC.

## 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 LEC in conjunction with the Law on the Structure of the Territory provide for specific rules dealing with the construction of electronic communication networks, equipment and related infrastructure. Further detailed regulations shall be issued jointly by the Minister of Regional Development and Public Welfare and the Chairman of the State Agency for Information Technologies and Communications.

- 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?**

Any undertaking providing electronic communications networks and/ or services enjoys a right of way granted by virtue of law for construction of new and/or expansion of existing networks and facilities when that is required for achieving the purposes of the LEC and is in public interest. Such right of way arises for all public and private properties, except for those where public infrastructure has been built. The right of way shall arise in the event (i) a detailed zoning plan is in force, and (ii) the right holder has paid compensation to the owner of the property. The amount of the compensation shall be determined by mutual consent of the parties or by a licensed evaluator. The right of way shall be reflected in the Cadastre Plan and shall be registered into the Real Estate Registry.

Further, the undertakings providing electronic communications networks and/ or services shall enjoy a right of use over the infrastructure that has been constructed over exclusive public property (e.g. roads, railways, water and/or sewage pipelines, gas pipelines, etc.), including their servicing areas and the water ways. Such right of use shall be granted by the responsible body or entity managing the respective infrastructure or public property upon one-time payment of compensation.

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

The installation of network infrastructure must be accomplished in compliance with the specific requirements for completion of construction works in this country. Pursuant to applicable Bulgarian law the construction process goes through certain stages, the most important of which are: (i) approval of investment designs for network infrastructure; (ii) issuance of the construction permit allowing the development of the infrastructure, under the approved designs; and (iii) permitting the operation of the network infrastructure, by way of issuance of operational permit or certificate of operation. Construction or installations developed without the relevant construction papers are considered “illegal constructions” and are subject to removal.

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

As a general rule, the undertakings providing public electronic

communications networks shall provide access to their networks to other such undertakings on the basis of an agreement. The CRC may impose an obligation on SMP undertakings to provide access to their network infrastructure (and particular components therefrom), including but not limited to the cases when the refusal from the latter may impede the stable competition on the retail market or is detrimental to the interests of the end-users. For the purposes of protecting the environment, health and public security, the CRC may impose an obligation to any operator to provide shared use of ducts, towers, premises and other telecoms facilities. The Bulgarian regulator may impose such a measure only after holding a public consultation.

## 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?

The LEC implements the Access Directive (2002/19/EC) in the regulation of access to and interconnection of public electronic communications networks and associated facilities. Operators of public electronic communications networks are entitled to freely negotiate interconnection with each other. At the request of another authorised undertaking, such operators are obliged to negotiate interconnection. Operators of public electronic communications networks authorised to operate in another EU Member State may request access or interconnection pursuant to the terms of the LEC.

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

The LEC follows the principle of priority of commercial negotiations over regulatory intervention. Still, the CRC may intervene on access and/or interconnection matters at its own initiative, upon failure of commercial negotiations between undertakings or at the request of either of the parties involved in such negotiations. With respect to access and interconnection, the LEC establishes both general regulatory powers of the CRC which exist irrespective of the market position of undertakings as well as regulatory powers which exist with respect to SMP undertakings.

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

In general, charges for interconnection and/or network access are not subject to price or cost regulation. The CRC may however impose upon SMP undertakings price controls, including obligations for cost orientation of prices in relation to the provision of specific types of interconnection and/or access. The CRC is also entitled to impose on such undertakings obligations for accounting separation and, in certain circumstances, to oblige vertically integrated companies to make transparent their wholesale prices and their internal transfer prices, as well as to specify the format and the accounting methodology to be used for price determination.

### 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?

The CRC may impose upon SMP undertakings the obligation to give third parties access to specified network elements and

facilities, including unbundled access to the local loop. Upon imposing an obligation for providing unbundled access to the local loop, the CRC also obliges the undertaking to make public a reference offer. The minimum contents of the reference offer is statutory determined. The CRC shall approve the reference offer following a public consultation procedure. Executed individual contracts may not contradict the reference offer.

### 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?

New network technologies are not subject to any specific interconnection and access regulatory conditions different from the general ones described above.

## 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?

In general, operators of public electronic communications networks and/or services determine prices according to market supply and demand. Retail prices are subject to notification before the CRC within 3 days prior to their entering into effect. The CRC has the power to regulate both retail and wholesale prices where (i) SMP undertakings have been imposed price controls and/or obligations for cost orientation of prices, and (ii) obligations for cost orientation of prices are set forth by the law.

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

When the execution of individual contracts only is not feasible in practice, operators of public telephone services may use general terms and conditions (GTC) to govern their relationships with end-users. The LEC establishes minimum content requirements for GTC, as well as for individual contracts with end-users, including those executed under GTC. GTC prepared by operators providing universal service are subject to approval by the CRC, while operators providing public telephone services shall submit the GTC before the CRC for reference only.

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

Operators of public electronic communication networks and/or services may collect, process and use traffic data, data necessary for the purposes of subscriber billing and location data, when such is immediately designated for provision of electronic communication services. When traffic data is no longer required for transmission purposes it must be erased or modified so that it is no longer personal data, except for specific cases provided for by law. Location data may only be processed with the subscriber's or user's prior written consent, and provided that such data is made anonymous or only to the extent and for the duration necessary for the provision of a value added service.

## 6 Numbering

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

Modelling the regulatory policy on the use for numbers falls within the competence of the CRC. The CRC develops a regulatory policy for use of numbers, addresses and names for carrying out electronic communications and the National Numbering Plan, which sets out the allocation of numbers used in the electronic communications networks for identification, routing and charging.

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

Rights of use for numbers are granted on an individual basis. The procedure for granting of rights of use for numbers broadly follows the one for granting of rights of use for radio frequency spectrum. Rights of use for numbers may be granted only to providers of electronic communications services and/or networks.

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

As numbers are considered to be scarce resource, rights of use for numbers are granted by a permit issued by the CRC. A permit is awarded on a competitive basis (after holding an auction or tender) where the number of applicants exceeds the number of persons that may be granted a permit for the available numbers. A permit is awarded without a competitive procedure only in a number of cases explicitly specified by law. The conditions for granting numbers for secondary usage shall be specified in the permit.

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

Subscribers of public telephone services shall be entitled to retain their numbers independently of the undertaking providing the service, as follows: (i) in case of geographic numbers, the numbers can be retained at a specific location, independently of the change of the provider of the fixed telecom service, and/or independently of the change of address within one and the same geographic national code for destination; (ii) in case of non-geographic numbers, they can be retained at any location, irrespective of the change of the provider of the respective service; and (iii) in case of numbers of national importance, they can be retained at any location, irrespective of the change of the provider of mobile telephone service.

Number portability with respect to mobile operators was envisaged to become effective on 1 January 2007 but is delayed. With respect to operators of fixed networks number portability is envisaged to become effective on 1 January 2009. There is no timetable for introducing fixed-to-mobile portability or vice versa.

## 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?

Undertakings carrying out electronic communications have to pay:

(i) an annual fee for CRC's controlling activities (up to 0.012% over the annual gross revenues from provision of electronic communications networks and/or services, VAT not included and following deductions as provided by the law); and (ii) one-time fee for administrative services. In addition, undertakings using individually allocated scarce resource have to pay: (i) an annual fee for use of such resource; and (ii) a one-time fee for granting a permit for use of such resource.

## 8 Submarine Cables

### 8.1 What are the main rules governing the bringing into Bulgaria'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 main rules governing the landing of submarine cables are set forth in (i) a number of international treaties which Bulgaria is a party to, including inter alia the UN Convention on the Continental Shelf of 1958 and the UN Convention on the Law of the Sea of 1958, and (ii) the Law on Sea Space, Internal Waterways and Harbours of the Republic of Bulgaria. Bulgaria has exclusive rights and jurisdiction on the landing of submarine cables in the exclusive economic zone and in the internal waterways. In the zone of the continental shelf, submarine cables can be landed by other states, provided that the interests of Bulgaria related to research, development and use of the shelf's natural resources and the protection of the marine environment are not affected. The routes of the cables are determined by an agreement between Bulgaria and the affected state. As far as landing submarine cables by private entities is concerned, the regulations governing the right of use of exclusive public property shall apply (please see question 3.2 above).

## 9 Radio Frequency Spectrum

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

The use of radio frequency spectrum is regulated by the Council of Ministers (the government), the National Radio Frequency Spectrum Council (the "Council"), the State Agency on Information Technologies and Communications (the "Agency") and the CRC. The Council of Ministers adopts (i) state policy on planning and allocation of the radio frequency spectrum upon proposal of the Council and following a consultation procedure, and (ii) national plan on allocation of the radio frequency spectrum, upon proposal of the Council and following a consultation procedure with respect to civil needs. The CRC grants for use the radio frequencies for civil needs and has powers relating to management of radio frequency spectrum.

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

Distinction in spectrum allocation for mobile, fixed and satellite usage is made in the State Policy on Planning and Allocation of the Radio Frequency Spectrum (adopted by the Council of Ministers and promulgated in State Gazette, issue 16 of 21 February 2006). The National Plan on Allocation of the Radio Frequency Spectrum (adopted by decision No 545 of the Council of Ministers dated 28 June 2004, as amended) further allocates radio frequency bands distinguishing between mobile, fixed and satellite usage.

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

The installation and operation of satellite earth stations shall conform to the requirements set forth in the Law on Technical Requirements to Products. The use of radio frequencies that are harmonised in the EU is free, while specific allocation of individual radio frequency band shall be subject to a permit issued by the CRC.

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

A permit for use of radio frequency spectrum is awarded on a competitive basis (after holding an auction or tender) where the number of applicants exceeds the number of persons that may be granted a permit for the available radio frequencies. A permit is awarded without a competitive procedure in a number of cases explicitly specified by law, including (i) where the number of applicants is lower or equal to the number of persons that may be granted a permit for the available radio frequency spectrum, and (ii) for carrying out electronic communications through use of available and/or new analogue electronic communications networks for terrestrial analogue radio broadcasting, after a permit granted by the CEM.

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

Permit-exempt is the use of spectrum which does not need to be individually allocated, upon carrying out electronic communications for own needs.

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

The following fees are payable for the use of individually allocated radio frequency spectrum (i) a one-time fee for awarding a permit for spectrum use, and (ii) an annual fee for spectrum use, determined on the basis of a number of criteria provided for the law, including territorial coverage of the permit, term of spectrum use, etc.

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

The Bulgarian regulatory framework does not allow for spectrum trading. However, Bulgarian law allows assignment of a permit for spectrum use, or some of the rights and obligations thereunder, by the permit holder, subject to a prior approval by the CRC (see also question 2.3 above).

## 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 LEC prohibits surveillance or interception or storage of communications designated for third parties without the explicit

consent of the sender and the receiver, subject to a few exceptions provided by the law. Thus, for reasons of national security and public order, the LEC obliges operators of public electronic communications networks and/or services to ensure the possibility for interception of communications in real time, continuous surveillance of communications and access in real time to data relating to a particular call. Therefore those operators are required to ensure appropriate interception interfaces and such possibility shall be effected only following the procedure of the Law on the Special Intelligence Means (i.e. only with a written court permission issued upon request of authorised authorities).

## 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?

Bulgarian law does not provide for specific regulation on services over the Internet, therefore the general authorisation shall apply unless scarce resource (radio frequency or numbers) is needed for the provision of the respective service. In the latter case the issuance of a permit shall be required.

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

Any communication aimed at direct marketing shall be allowed only following a prior consent of the consumer, provided that such consent may be withdrawn at any time. The law prohibits distribution of communications for marketing purposes (even if all the above requirements are met) if the sender may not be identified or the sender's address is invalid and thus the end-user may not deliver his refusal to receive such communications.

## 12 USO

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

Universal service obligation (USO) is defined as a set of services with a pre-determined quality that shall be offered to all end-users at accessible price irrespective of their location in Bulgaria. The scope of the USO includes among others: (i) connection to the public telephone network and access to the publicly available telephone services; (ii) access to public pay phones; (iii) provision of directory services; (iv) placing of emergency free of charge calls to the respective national numbers and to "112"; and (v) access to public telephone services by disabled persons, etc.

The CRC shall determine one or more undertakings to provide all or part of the services pertaining to the scope of the USO and thus shall ensure the delivery of those services throughout the territory of the country. Currently only the incumbent operator (Bulgarian Telecommunications Company AD) is imposed with the obligation to provide universal service.

Prices of universal service are to be determined pursuant to a methodology adopted by the Council of Ministers, and are subject to approval by the CRC. The undertakings, to which an USO has been imposed, shall be compensated for their net costs associated with that service through a special fund to be established for those purposes.

### 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 legal restrictions regarding direct or indirect ownership in undertakings providing electronic communications in Bulgaria.



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### 14 Future plans

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

Pursuant to the LEC all pieces of secondary legislation envisaged for the implementation of said law should be adopted within six months as of the effective date of the LEC (26 May 2007). Those regulations however are not expected to change the existing regulatory regime but shall rather supplement it and shall provide for additional details that shall aim at facilitating the consistent implementation of the law.



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Lilia Kisseva joined Djingov, Gouginski, Kyutchukov & Velichkov in 2001. Currently holding the position of a senior associate with the firm, she specialises in the areas of telecommunications law, as well as corporate law and M&A. In the field of telecommunications law, Ms Kisseva has been involved in a number of projects advising major international and local telecommunications operators, service providers and equipment suppliers on various telecommunications law related matters. Recently she has been heavily involved in the representation of a major Swiss telecommunications operator in relation to setting up a local subsidiary and its operations in Bulgaria, including obtaining the requisite telecoms licenses, advice on various regulatory matters and assistance in a number of acquisitions of local networks.

## DJINGOV, GOUGINSKI, KYUTCHUKOV & VELICHKOV

ATTORNEYS AND COUNSELLORS AT LAW

Djingov, Gouginski, Kyutchukov & Velichkov is one of the largest and most prominent business law firms in Bulgaria providing first-class legal services. Founded in 1994 by the four name partners, the firm currently employs 45 lawyers, including 10 partners, and maintains offices in Sofia and Frankfurt am Main.

The law firm was established to meet the unique needs of the new free market environment in Bulgaria. It provides a full range of business related legal services to international and domestic corporate clients. The firm maintains a worldwide network of working relationships with a large number of international law firms based in Europe and North America. Djingov, Gouginski, Kyutchukov & Velichkov represents clients in a broad spectrum of transactions including corporate, mergers and acquisitions, privatisation, banking and finance, competition, energy and utilities, telecommunications, real estate and construction, environment, taxation, litigation, employment and intellectual property.

The firm and its lawyers are regularly highly evaluated by Legal 500 as well as Chambers & Partners in their yearbooks.