

Telecommunications Act 9/2014 of 9 May: The five major changes

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The Official Journal of Spain (BOE) published on 10 May the Telecommunications Act 9/2014. Measures aimed at facilitating the deployment of ultra-fast broadband networks, simplifying administrative procedures and changes regarding those under an obligation to fund the universal service are some of the most significant developments.

On May 11 the Spanish Telecommunications Act 9/2014 of 9 May came into force, repealing the preceding General Telecommunications Acts 11/1998 and 32/2003 and amending numerous legislative rules (the Gambling Act 13/2011; the Information Society Services Act 34/2002; the Building Act 38/1999; the Electronic Communications Data Retention Act 25/2007; the Common Infrastructures in Buildings for Access to Telecommunications Services Royal Decree Act (Order in Council) 1/1998 of 27 February; the Electronic Signature Act 59/2003 and the General Audiovisual Communication Act 7/2010).

Below follows a brief summary of the five main changes introduced by the Act, postponing for future papers a leisurely analysis and description of the remaining content.

1. Recognition of broad rights of occupation over public domain and private property and of shared use of infrastructure for the deployment of networks and the banning of preferential or exclusive rights. In order to encourage investment in new networks (especially fast and ultrafast broadband networks) and avoid conflicts that operators and local authorities have historically faced (even amongst each other), the new Act provides several measures to consolidate

the right of all operators to the occupation of property and the shared use of infrastructure for network deployment and provision of telecommunications services, regardless of who is the owner, provided there are no reasons (of public health, heritage preservation, environmental conservation, other services of public interest) that advise against a duplication of networks.

Thus, *public domain holders have the duty to ensure that all operators may access said domain under neutral, objective, transparent, fair and non-discriminatory conditions* and are barred from granting a preferential or exclusive right of access to or occupation over said public domain for a particular operator or a particular electronic communications network (the allocation of rights of occupation or use of the public domain for the installation or operation of a network through invitations to tender is expressly forbidden under art. 30 of the new Act).

Similarly, subject to agreement between the parties and payment of appropriate compensation (cf. arts. 36, 37 and 38), operators who install or operate electronic communications networks are recognised a right of access to any public or privately held infrastructure that is capable of being used for

the deployment of networks (e.g., tubes, poles, pipes, boxes, cameras and any associated resource that can be used to deploy and host electronic communications cables, equipment, devices...); in the event of dispute, the parties may appeal to the Spanish Competition and Markets Authority. This access is specifically recognised in relation to road, rail, port, airport, water supply, sanitation, and gas and electricity transportation and distribution infrastructure.

Simultaneously, *the installation of the final sections of fixed ultra-fast access electronic communications networks is encouraged in buildings and real estate compounds under, or that should be under, a commonhold regime or buildings that, in whole or in part, have been or are subject to a lease for a length of more than one year, through the use of shared electronic communications infrastructures or the deployment of infrastructure by each operator, once notice has been given to the property owners' association* (art. 45).

2. Ministry of Industry, Energy and Tourism (MINETUR, its acronym in Spanish) intervention in the procedure approving urban planning instruments.

Art. 38, regulating collaboration mechanisms between the MINETUR and territorial public administration for the deployment of public electronic communications networks, is particularly problematic from a jurisdictional point of view. Such collaboration comes in the form of a mandatory binding report issued by the Ministry on any approval, modification or revision of territorial or urban planning instruments affecting the deployment of public electronic communications networks. Without this mandatory report, the territorial or urban planning instrument cannot be approved in respect of the exercise of state powers in the area of telecommunications. Even MINETUR is urged to approve recommendations that may contain model municipal by-laws, for the preparation of the rules or instruments affecting the deployment of networks and infrastructure by the competent public authorities.

3. Simplification of administrative procedures.

Authorisations and licenses (construction, installation, operation or activity, or of an environmental or similar nature) for the deployment of certain facilities and infrastructure, including radioelectric stations or infrastructure, are replaced by statements

of compliance (art. 37(6)) and any type of authorisation or statement of compliance is excluded in the execution of technological innovation improvements or technical adaptation involving the incorporation of new equipment or radioelectric emissions in new frequency bands or using other technologies, without altering civil engineering works and masts (art. 37(7)).

In this context, the new Act also provides for substitution with a statement of compliance and a certificate - issued by an authorised technician - of approval of the technical plan and favourable examination or inspection of facilities by the Telecommunications and Information Society Junior Minister's Office (SETSI, its Spanish acronym), required prior to use of the radioelectric public domain (art. 62(9)).

Pending applications for licenses or authorisations, required under the previous legislation, may be resolved under the new rules, if the applicant chooses this alternative before final resolution (7th and 12th transitory provisions).

4. Not all operators are required to fund the universal service.

The new Act only requires contribution to the funding of the universal service from those operators whose *annual global gross income exceeds one hundred million euros*, amount which may be updated or modified by royal decree on the basis of market developments (articles 27(2) and (3) Act 9/2014).

5. The public administration can only operate networks and provide telecommunications services to third parties through operators directly or indirectly controlled by such administration and subject to the private investor principle.

These operators must provide other operators access to and shared use of infrastructure and associated resources used by them for the installation and operation of electronic communications networks under neutral, objective, transparent, fair and non-discriminatory conditions (art. 9) and must adapt to the new requirements within one year (2nd transitory provision).

In addition to these five major changes, other less important developments are noteworthy:

- In respect of the **rights of users**, together with the classical ones (right to information,

early cancellation, itemised bill...), the express recognition of the following rights of end users constitutes a novelty: a) automatic termination of contracts after the end of the change of operator with number portability process (art. 47(1)(c)); b) right to compensation, even automatic, in the event of delays or abuses in number portability (art. 47(1)(c)); c) the right to disconnect certain services and access to "other types of services" only upon specific request of the user (art. 47(1)(e)); d) an express statement that the administrative approval of standard contracts "does not exclude administrative or judicial review of the standard terms and conditions contained in

those contracts, in accordance with legislation in force" (article 47(g)); e) the right to receive proof of contract in writing or in another durable medium (art. 53(4)).

- The rules to calculate administrative **fees** are modified (Schedule I, 6th transitory provision)
- The SETSI is authorised to effectuate, at any time, an **active protection of the radioelectric public domain** through emissions without substantive content on those radioelectric frequencies and channels whose rights of use, in the relevant territorial ambit, have not been granted (article 65).

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