

IT AND TELECOM SORAINEN LEGAL UPDATE

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SORAINEN

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Dear Reader,

This is already our fifth edition of IT and Telecom regional Legal Update.

Thanks so much to our specialised partners in this field, Agris Repss and Kaupo Lepasepp, and specialist lawyers Mihkel Miidla, Paulius Galubickas, Antanas Dzinga, Erika Budaite, and Yuliya Liashenka for bringing this edition to you.

We welcome suggestions to improve future issues. Please send your comments to our offices at the e-mails indicated in the contact details. For more information please visit our webpage www.sorainen.com.

Enjoy your reading!

Renata Berzanskiene
Head of Sorainen Information Technology Legal Team

EU NEWS

TELECOMS

No regulatory holidays for new telecom services

In case C-424/07 *Commission v. Germany* the dispute arose over Germany's amendments to its telecom law. The European Commission launched infringement proceedings against Germany over "regulatory holidays" for Deutsche Telekom. The Commission was concerned that the newly amended German telecom law would effectively exempt Deutsche Telekom fast internet access network (VDSL) from competition and grant it a "regulatory holiday", despite the Commission's early warnings that such amendments were incompatible with EU rules.

The legislation was subject to amendments concerning new markets based on VDSL networks. These amendments laid down a general rule that new markets should not be regulated. According to the Commission, this rule is intended to favour investment by the incumbent German telecommunications operator in a broadband network by removing the threat of regulatory intervention. The Commission took the view that such amendments to the law would jeopardise the position of competitors on the broadband market, at the same time attempting to limit the discretion granted to the national telecoms regulator.

The Advocate General's Opinion declared that Germany would be allowed to make such a policy choice, but not when EU regulation of the telecommunications sector exists. Here, the choice has already been made by the EU legislature to submit this sector to regulation, with all the possibilities for intervention that it entails. The telecommunications sector undoubtedly includes

new markets-defined legislation. Therefore, Germany cannot institute a rule of regulatory exemption for new markets, as it does in its telecom law.

Therefore, the Advocate General proposed to the European Court of Justice that it declare that in amending its law on telecommunications Germany has failed to fulfil its obligations under the Framework Directive, the Access Directive, and the Universal Service Directive.

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Roaming Regulation brings down prices

As of 30 August 2008 it became cheaper to call or receive mobile calls within the EU. The ceiling on tariffs (Eurotariff) introduced by the EU in 2007 was decreased from 49 cents to 46 cents per minute (excluding VAT) for making calls and from 24 to 22 cents per minute for receiving calls while in another EU Member State. Further reductions on Eurotariff for voice calls will take place on 1 July 2009: prices for making calls will decrease from 43 cents to 39 cents and even to 35 cents in the coming years. The price for receiving calls will decrease on 1 July 2009 from 19 cents to 15 cents and to 11 cents in the coming years. Consumers will also benefit from per-second billing after 30 seconds for calls made, and per-second billing throughout for calls received to ensure that consumers do not face any "hidden costs" while roaming. This is expected to increase consumer savings by over 20%. These reductions are available due to the Roaming Regulation, which was recently extended to SMS messages and other data services.

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As required by the current roaming rules, the Commission and national regulators started closely monitoring price developments for text messages and data services. On this basis, the Commission was asked to review the Roaming Regulation and to decide whether or not to include text messages and data services in the scope of the Regulation. It became apparent that competition has not encouraged mobile operators to voluntarily reduce the very high roaming charges for text messages. Prices remain too high, especially compared to the actual costs incurred by operators. The Commission's proposal on 23 September 2008, accepted by the European Parliament and Council, enters into force on 1 July 2009 and will:

- bring down prices for text messages sent while travelling in another EU country,
- ensure that the public is kept adequately informed of charges applicable to data roaming services, and
- introduce per second billing after the first 30 seconds for calls made and immediately for calls received.

Essentially, the Commission extended the scope and duration of the EU Roaming Regulation. What kind of changes will enter into force on 1 July 2009? The Regulation introduces the so-called Euro-SMS Tariff: from 1 July 2009 sending an SMS from abroad will cost no more than 11 cents (excluding VAT). Receiving an SMS in another EU country will remain free of charge. Moreover, the amendments intend to improve transparency: customers travelling to another Member State should receive an automated message of charges that apply to data roaming services. From 1 March 2010, operators must enable customers to determine in advance how much they want to spend before the service is "cut off". One of these financial limits (the default financial limit) must not exceed EUR 50.

Further, the Regulation introduces wholesale caps for data roaming: the changes set a ceiling of EUR 1 per megabyte for wholesale data roaming fees to make them more predictable for operators, stimulate competition, and enable even more transparent retail prices. This limit will be decreased each year.

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DATA PROTECTION

Internet social networks become more secure for minors

For the first time 17 leading Internet companies (Arto, Bebo, Dailymotion, Facebook, Giovanni.it, Google/YouTube, Hyves, Microsoft Europe, Myspace, Nasza-klaza.pl, Netlog, One.it, Skyrock, StudiVZ, Sulake/Habbo Hotel, Yahoo!Europe and Zap.lu) have signed a European agreement aiming at introducing a higher level of security in the use of social network web sites for young people under the age of 18. Social network web sites are a new phenomenon of a social and economic nature which until now has attracted 41.7 million regular users in Europe. Development of these networks has changed the way communication takes place on the Internet. Use of social network web sites increased by 35%

in Europe last year. It is expected that the number of users of social network web sites will double by 2012, thus reaching 107.4 million people. The agreement, signed in Luxembourg on 10 February 2009 during the Safer Internet Day organised by the Commission, should enable teenagers to avoid potential on-line risks, such as disclosure of personal data and information, blackmail, and threats.

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ESTONIA

TELECOMS

Data retention guidelines issued for ISPs and providers of e-mail and VoIP services

The Estonian Technical Surveillance Authority has issued an explanatory guideline on the data retention obligation. The guideline is targeted at providers of Internet, e-mail, and VoIP services. The purpose of the guideline is to ensure uniform application of the data retention requirements set out in Directive 2006/24/EC. The guideline offers detailed explanations as to the content of data that needs to be retained and the purposes for retention of such data.

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INFORMATION SOCIETY SERVICES

Changes to use of the .ee domain

The Estonian Ministry of Economic Affairs and Communications established the Estonian Internet Foundation (EIF). In the near future the EIF is to become the manager of the Estonian top level domain (.ee), currently managed by the Estonian Educational and Research Network and the National Institute of Chemical Physics and Biophysics. The purpose is to significantly liberalise the possibility to use .ee domain names, including the possibility for one person to apply for several .ee domains. The use of .ee will become subject to an annual fee, estimated to be set at EEK 100 – 200 (EUR 6.4 – 12.8). New statutes for use of the .ee domain are currently under development. The EIF will act as an arbitration court in domain disputes. The EIF will become the representative for Estonian Internet society with the International Corporation for Assigned Names and Numbers (ICANN).

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Taxation of remote gambling

On 22 April 2009 the Estonian Parliament adopted a new Gambling Tax Act. As a novelty, the new Gambling Tax Act introduces taxation based on the net amounts of placed bets, which is also applicable to remote gambling. This means that organisers of gambling are allowed to deduct paid winnings from the taxable amount. Amounts paid as participation fees in gambling tournaments will be taxed separately from placed bets. The Gambling

Tax Act will enter into force on 1 July 2009. The provisions regulating taxation of remote gambling will enter into force on 1 January 2010.

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LATVIA

INFORMATION SOCIETY SERVICES

European Commission accuses Latvia of failure to guarantee independence of national telecom regulator

In April 2009, the European Commission sent Latvia a reasoned opinion, the second phase of infringement proceedings, for not following EU rules that guarantee the independence of national telecoms regulators. The Commission considers that Latvia does not provide full separation between regulatory and ownership functions in the telecoms sector. That is, the Ministry of Transport, which prepares decisions on the allocation of radio frequencies and management of the national numbering plan, also controls two fully state-owned communications and network providers – the State Information Network Agency (VITA), and the Latvian State Centre for Radio and Television (LVRTC). EU rules require that if member states retain control of companies providing telecoms networks or services, they must ensure effective structural separation of the regulatory function from activities associated with ownership or control.

Domain registration rules to be liberalised

Latvian domain registration rules will be made significantly more liberal, starting from 1 July 2009. At present, the domain registration rules tend to protect rights of other persons by providing, for example, that a name which coincides with a registered company name may be registered only by that company. The new rules will work on a "first come, first served" basis, and the registry will no longer examine possible rights of other persons. The rules still provide that the selected domain may not infringe the rights of another person. Disputes would have to be resolved in court, but the registry would freeze the right to use the domain until the dispute is resolved. The draft new rules are available at www.nic.lv, and interested parties may submit comments until 22 June 2009.

Introduction of digital television in Latvia: some steps forward

On 31 March 2009 the main Latvian television network provider, the Latvian State Centre for Radio and Television (LVRTC), signed an agreement with Lattelecom, one of the largest telecom operators, on the use of LVRTC infrastructure to introduce terrestrial digital television. At the end of 2008, Lattelecom was endorsed by the government to organize introduction of digital television in Latvia. The agreement with LVRTC will enable Lattelecom to commence technical testing of digital broadcasting. Next steps planned include installation of retransmission towers, and negotiations with broadcasting companies on content creation.

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DATA PROTECTION LAW

State Data inspection elaborates definition of personal data

The State Data inspection has developed a detailed recommendation on "Definition of personal data". Though this consists of informative material not of a binding nature, it provides a helpful insight into interpreting the definition of personal data and can be used as a tool for interpreting legal provisions. The aim of the recommendation is to promote unified understanding of personal data as well as compliance of personal data protection provisions with the law.

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LITHUANIA

TELECOMS

New guidelines on VoIP services published

On 23 December 2008 the Communication Regulatory Authority (CRA) initiated public consultation on guidelines for treatment of VoIP services (the Guidelines) and has called interested parties to submit their opinion on the provision and qualification of VoIP with regard to telecom regulations.

The CRA is of the opinion that provision of VoIP services under telecom regulations should be considered as provision of "publicly available" electronic communication services if both the following conditions are met: (1) VoIP is provided in publicly available electronic communication networks, and (2) subscribers of VoIP may originate calls to a public switched telephone network (PSTN) and/or receive calls from PSTN.

In the Guidelines, the CRA distinguishes three categories of possible provision of publicly available VoIP: (1) the VoIP provider ensures the possibility to originate calls to PSTN without number allocation to the subscriber; (2) the VoIP provider ensures the possibility to receive calls from PSTN and allocates the number to the subscriber; or (3) the VoIP provider ensures the possibility both to originate and receive calls to/from PSTN as well as allocating a number to the subscriber.

All three different types of VoIP provision are seen by the CRA as publicly available telephone services. According to the CRA view, the third category of VoIP provision should attract the same statutory obligations as PATS, because these VoIP services may be regarded as a replacement of traditional PATS. However, the first and the second categories of VoIP services should attract only those statutory obligations of traditional PATS which are technically possible to implement.

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WiMax launched in Lithuania

The Lithuanian state-owned company AB "Lietuvos radijo ir televizijos centras" (LRTC) has launched mobile internet services based on WiMax technology in Lithuania, named MEZON. It is worth noting

that the tender results for the right to operate a public communications network based on WiMax were followed by court disputes initiated by the unsuccessful bidders (reported in Sorainen Legal Update No 2). WiMax is the newest 4G mobile connection technology, with internet connection speeds up to 10 Mbit/s.

MEZON will compete directly with Omni Connect (3G) provided by mobile operator OMNITEL and Vodafone mobile Connect (3G) provided by mobile operator Bite Lietuva. It is expected that WiMax technology, which will require an investment of about EUR 30 million within two years, should pay off within five to six years.

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INFORMATION SOCIETY SERVICES

Security of strategic electronic information not duly ensured

The National Audit Office (NAO) has investigated the security situation of strategic electronic information in Lithuania. The report, dated 16 March 2009, states that the security of electronic information is not properly ensured in Lithuania and a systematic approach of the State towards security issues is lacking.

The NAO stated that no legislation regulates electronic information security and measures for its protection. Furthermore, no clear division exists of functions and cooperation among State institutions.

Unprotected strategic electronic information may impair the interests of the State and its inhabitants. However, proper protection of strategic electronic information and infrastructure as well as efficient use of financial funds allocated to them can only be ensured with legal instruments.

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Shocking audit results of management of public sector IT projects

The National Audit Office (NAO) conducted an audit of management and implementation of information society development projects financed by European Union funds in Lithuania. About EUR 62.9 million of EU and Lithuanian state budget funds were allocated to implementation of IT projects in the public sector during 2004 – 2006. It was found that often IT systems are introduced without proper documentation, and that work co-ordination is lacking. Besides, IT project deadlines are often not met, while substantive terms and specifications of IT projects are often amended during projects, and adequate control of implementation of IT projects is often absent.

It was found that State institutions responsible for co-ordinating IT projects in the public sector do not properly perform these functions. Therefore, some newly implemented IT systems can not be harmonized with existing ones or may even duplicate them.

It was also found that 71% of IT systems financed by EU funds are developed without having their functions and objectives approved, and 93% without technical requirements, economic justification, or an implementation plan. Therefore, developed IT systems may not be harmonized with one another and they may not fulfil their planned functions, so that funds assigned to development may not be used effectively.

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BELARUS

TELECOMS

New Technical Code adopted

A Technical Code of common practice for Rules of Electronic Communication Networking TKP 179-2009 (02140) will enter into force on 1 July 2009. The Technical Code establishes the main rules of electronic communication networking of public usage (stationary telephone networks, data networks, cellular networks). The rules are compulsory for legal entities and entrepreneurs dealing with networking.

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INFORMATION SOCIETY SERVICES

New law on Data Protection to enter into effect on 27 May 2009

The Law on Information, Informatisation, and Data Protection will enter into force on 27 May 2009. The Law defines state and private information resources and information systems. State information resources and systems should be registered in the State Register of the Ministry of Communications and Informatisation. Registration of private information resources and systems is not mandatory. However, they may be registered voluntarily.

IT and telecom news in Belarus

From 1 April 2009 broadcasting of several Russian TV channels in Belarus stopped for commercial reasons.

The 16th International Forum on Telecommunications, Information and Banking Technologies took place on 21 – 24 April 2009. Within the framework of the Forum also the 16th International Congress on Telecommunications, Information and Banking Technologies took place. The Congress agenda covered, inter alia, strategy for forming an information society, broadband access technologies and service, electronic government, and the electronic society. The main actual and prospective areas of information development in Belarus were shown.

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NEWS IN SORAINEN

■ Awards

Sorainen – among the leaders in Europe

Sorainen received the Baltic Law Firm of the Year 2009 award at the *International Financial Law Review* (IFLR) European Awards 2009 held in London on 18 March 2009.

The annual IFLR European Awards acknowledge leading law firms in Europe for advising on the most complex and innovative international transactions. Award winners are selected following extensive research by IFLR experts based on submissions by firms as well as feedback from clients, in-house counsel, and financing specialists at international financial institutions.

Sorainen was recognised as the Baltic Legal Advisor of the Year by *The Financial Times* and *Mergermarket* in December 2008 and then in January as the Baltic Law Firm of the Year in the international *PLC Which Lawyer?* Law Firm Awards 2009. Having received three prestigious international awards during recent months, Sorainen is one of only two law firms in the whole of Europe to receive all three awards in one regional/national category.

■ Recent deals

Advising major Nordic banking group on data protection

Advising a major Nordic banking group with regard to a new CRM system and intragroup arrangements related to transfer of client databases to a single location and intragroup accessing of the same. Advice provided on a pan-Baltic level started from simple review and amendment of client agreements to advising on data transfer and processing rules to be implemented for compliance with requirements of several jurisdictions. The case was handled by partner Kaupo Lepasepp and associate Mihkel Miidla.

Drafting and systemising agreements for leading Nordic IT solutions provider

Tallinn office drafted and systemised general service agreements and agreement structure for a leading Nordic IT solutions provider operating in Estonia. In 2008 the Sorainen IT-team assisted the client in launching several specific services. Our work included drafting and reviewing agreement documentation (service agreement and service description usable both for legal and marketing purposes), as well as legal risk analysis and offering legal and IT means to mitigate risks. Our recent cooperation relates to the client's novel web-based management and invoice authorisation solution, e-archiving and e-invoicing (for use in B2B relations) service agreements. The case was handled by partner Kaupo Lepasepp and associate Mihkel Miidla.

Advising online gambling operators

Advising several remote (online) gambling operators in matters related to preparation for

the new Gambling Act which allows licensing of remote gambling activities and launching of marketing campaigns in the strictly regulated market of advertising gambling activities. The cases were handled by partner Kaupo Lepasepp and associate Ivar Kurvits.

Riga office contracted by foreign law firm

Riga office has been contracted to perform a study on activities undertaken by Latvian authorities and industry to address threats that undermine confidence in the Information Society such as spam, spyware, and malicious software. The client is being advised by partner Agris Repss.

Reviewing Software and Support Policy implementation in Latvia

We advised XEROX UK Representative Office in Latvia in implementing a new Software and Support Policy. Sorainen advised the client on whether the new policy is in line with local legislation. The Riga office team is led by partner Agris Repss.

Examining Member State and EEA implementation of electronic points of single contact

A Riga office client – a foreign service provider – performed a study for the European Commission (DG Markt) on a specific aspect of implementing the recent Services Directive, in particular article 8 of the Directive. This article requires Member States and EEA countries to implement electronic points of single contact (e.g. a website) by the end of 2009, where service providers covered by the Directive can electronically complete all procedures and formalities in order to be able to start or exercise a service activity in that country. For this study, Sorainen examined how Member States and EEA countries process electronic documents (e.g. electronic tax declarations, electronic diplomas, electronic statements from the service provider) through these points of single contact. The study was led by partner Agris Repss.

Advising leading computer technology and IT consulting corporation

Vilnius office advised one of world's leading computer technology and IT consulting corporations on launching telecommunication services and locating its data centre in Lithuania. Sorainen team was led by partner Renata Berzanskiene and associate Paulius Galubickas.

■ Employees

Every 5th lawyer in Sorainen is on the list of best lawyers in the Baltics

The international law directory Best Lawyers International 2009 nominated 19 lawyers from Sorainen offices in Tallinn, Riga, and Vilnius among the best in the Baltic countries. This means that every 5th lawyer in Sorainen is the best in the market. Furthermore, some of them were nominated as leading lawyers in several

practice areas. The nominees were selected based on confidential evaluation by specialists and clients.

Peer-reviewed listings of Best Lawyers International 2009 organised selection of the best lawyers in the Baltics for the first time this year. In total, research was organised in 48 countries around the world in different legal spheres for a particular country.

Best Lawyers is the oldest and most respected peer-review publication in the legal profession helping lawyers and clients to find legal counsel in unfamiliar jurisdictions or unfamiliar specialities. The Best Lawyers directories have been published since 1983.

■ Other

Tallinn office contributes to The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009 Estonia

Kaupo Lepasepp – Tallinn office partner and head of the Commercial Contract Team and the Competition and Regulatory Team in Tallinn office – and associate Ivar Kurvits have contributed to The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009 issued by Global Legal Group. The guide gives an overview of the legal framework of telecommunication laws and regulations in Estonia and is available on our website under Publications.

10 years for Sorainen Vilnius office

Sorainen Vilnius office has celebrated its 10th anniversary. The office was the third Sorainen office in the region. Since 1999 to date Sorainen Vilnius office has built a strong team of leading professionals consisting of 34 lawyers and 23 administrative employees. As the largest Sorainen office by number of lawyers, the office can also be proud of the number and value of transactions advised, as well as its clientele. The office is constantly advising on a majority of the largest M&A, private equity, corporate, financing, real estate, and other commercial transactions in Lithuania.

1st Anniversary of Sorainen Minsk office

Sorainen Minsk office has celebrated its 1st anniversary. Sorainen's entry into Belarus was a landmark event in the local legal market as we were among the very first Western European professional service firms starting business in Belarus. At the end of the first year, the Sorainen Minsk team includes 3 partners, 5 associates, several legal assistants, and administrative personnel. Sorainen helps clients in successfully accomplishing all matters related to business laws in Belarus and is able to provide a full spectrum of legal services to local and foreign clients doing business in Belarus.