

The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009

A practical insight to cross-border Telecommunication Laws and Regulations



Published by Global Legal Group with contributions from:

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Estonia

Kaupo Lepasepp



Ivar Kurvits



Sorainen

1 Framework

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

The privatisation of the Telecommunications sector started in 1991 when Estonia re-declared its independence. The 2000 Telecommunications Act was a step towards the liberalisation of the Estonian telecom sector and compliance with EU requirements. Upon the accession of Estonia to the EU on 1 May 2004 and the new Electronic Communications Act on 1 January 2005, Estonia had to incorporate the 2002 directives, to achieve full harmonisation.

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

The Electronic Communications Act entered into force on 1 January 2005. The Act implemented all of the 2003 regulatory framework directives.

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 Electronic Communications Act (ECA) regulates the operation of electronic communications networks. The ECA provides for the public availability of electronic communications networks and communications services, radio communication, management of radio frequencies and numbering, apparatus, and state supervision over compliance with requirements and liability for violation of said requirements.

The Minister of Economic Affairs and Communications may, under ECA regulations, specify the provisions of the ECA. There are over 30 regulations in this area alone.

Other legislative acts regulating these areas are the Competition Act, Consumer Protection Act, Broadcasting Act, Digital Signatures Act, State Fees Act and Information Society Services Act.

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

At the beginning of 2008 a new Estonian Competition Board

(ECB) was formed which encompasses in itself the activities of the former ECB and Estonian National Communications Board. Therefore according to the ECA, the reorganised ECA and the Estonian Technical Surveillance Authority (ETSA) are the main regulatory agencies acting under the Minister of Economic Affairs and Communications.

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

Technological matters [e.g. general services (connections to telephone networks, pay phones, and the availability of electronic telephone number catalogues), numeration administration, radio communication, line structures, communication services, apparatuses] of electronic communication regulation and supervision are conducted by ETSA. ECB conducts sector-specific technologically neutral regulation of markets of communications services (e.g. designation of SMP's, market analysis, concentration related issues).

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?

An electronic communication service provider wishing to provide communication services must be listed in the Estonian Commercial Register, or must have registered as a branch in the Estonian Commercial Register. For general authorisation, the service provider must submit a notice of commencement of activities to the ETSA. For notification requirements, please see Section 2.

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?

In the market for wholesale voice call termination on individual mobile networks, the service providers and operators in Estonia subject to significant market power (SMP) obligations for the purposes of the ECA include Elisa Mobiilsideteenus AS, AS EMT and Tele 2 Eesti AS. The ECB has imposed an obligation of transparency, non-discrimination, access, interconnection, price control and cost accounting to these operators. Imposing of SMP obligations is regulated by ECA.

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

Content is not subject to regulations under the ECA. However, Chapter X of the Act regulates data protection and regulation.

Pursuant to the Information Society Services Act, the service provider has no obligation to monitor information that a) he provides access to; b) provides transmission of; or c) he stores temporarily in cache memory or storages of information at the request of the recipient of the service. Nor is he obligated to actively seek facts or circumstances indicating illegal activity.

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

All of the 18 markets defined in the European Commission recommendation (C(2003) 497) of 11 February 2003 issued, in accordance with Directive 2002/21/EC, have been notified to the European Commission.

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.

The ECA requires a general notification for the commencement of provision of activities and a special permit for the use of radio frequencies and numeration.

With regards to the general commencement notification, the person wishing to provide services must submit a signed notice to the ETSA. The person shall not pay the state fee. The notice contains information for anyone wishing to start activities (name of the company and business identify codes; names, addresses and contact numbers) and about the service (classification of the service and geographical area of the service) and estimated commencement date of activity.

The ETSA shall register the notice and send a confirmation to the person within seven working days of the receipt of said notice, as well as a description of rights and obligations of undertaking the provision of a communication service. The notice and description of rights and obligations shall be available on the ETSA website within seven working days of the receipt of the notice at the latest.

In order to obtain a radio frequency permit, the service provider must submit an application to the ETSA. A broadcasting licence or agreement must to be submitted to the ETSA to obtain usage of radio frequencies for broadcasting. The ETSA must notify the applicant of any deficiencies in the application within one week of the receipt of said application, and grant a term for elimination of the deficiencies. Before the frequency authorisation is granted, the ETSA must notify the applicant. The applicant shall pay the state fee within five working days of the receipt of the notification of the payable amount of the state fee.

With regards to the numeration authorisation, a person must fill in and submit an ETSA notice. The ETSA issues a numbering authorisation corresponding to the desired number. The decision of the ETSA is available on its website within ten working days after granting the licence at the latest, so long as the applicant has paid the relevant state fee.

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

Pursuant to the Building Act, to build line structures, a building permit must be obtained from the local government. Line facilities are planned, designed, constructed and maintained under the conditions, and pursuant to the procedure provided by the Planning Act and the Building Act.

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

Notification of activities may not be transferred. With regards to numbering licences, the Minister of Economic Affairs and Communications may establish the conditions for the transfer of the right to use a number. Hence, the legislation purports the transfer of numbering licences; however, there are no specific regulations relating to transfer.

For the transfer of frequency authorisations please see question 9.7.

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

There is no duration for the general notification. A communications service provider is required, if information specified in the notification is modified, or the activities for which notification has been given are terminated, to submit a written notice to the ETSA no later than five working days of the changes of information or termination of the activities. Radio frequency and numeration permits are issued for a one-year period and are renewable annually for a one year term. For each renewal, the service provider must pay a state fee.

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 Law of Property Act, Law of Property Act Implementation Act and Immovables Expropriation Act regulate questions regarding the landlord's obligation to tolerate utility networks erected on their land. The Building Act and Planning Act regulate issues relating to the planning and erection of the respective networks.

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?

Pursuant to the Property Act, if the building of network infrastructures is not possible without using an immovable, or would cause excessive expense, the owner of an immovable must tolerate infrastructure networks and construction works necessary for servicing networks to be built on the owner's immovable above and below ground, and in any airspace for a reasonable fee. In such cases, the owner of the immovable may request that the owner of another immovable encumbers its immovable with real servitude. The specific content of the real servitude shall be subject to agreement.

With regards to utility works for public interest, the owner of an immovable must tolerate networks and works and authorise their building on its immovable if there exists no other technically or economically convenient possibility to connect the end user to the

network infrastructure, or to improve the network infrastructures. A network infrastructure is built in the public interest if public service is provided thereby and it belongs to a person who has universal service obligation.

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

The Planning Act stipulates the principles regarding the planning of network infrastructures. Pursuant to the general rule the landowner shall be involved in the national, county, comprehensive, or detail plan preparing process. The planning of the respective infrastructure or line facility must restrict the landowner's interests to the minimum extent. The owners of such networks or line facilities must be involved in the planning process.

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

Infrastructure sharing falls under the general provisions of ECA dealing with interconnection and access. Please see question 4.1.

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?

There is no general obligation of access and interconnection. Persons enjoy the freedom to enter into access or interconnection agreements. The ECA requires a service provider to negotiate the interconnection in good faith if this is necessary for the provision of communication services.

However, the ECB may impose obligations necessary for the assurance of end-to-end connectivity, including obligations for the interconnection of networks, on a communications undertaking providing network services and controlling access by end-users. The ECB may impose on a service provider the obligation to ensure access to the application program interfaces and electronic programme guides.

Regarding SMPs, the ECB may impose obligations related to the charges and costs of access and interconnection.

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

The ECB settles disputes and complaints related to access or interconnection. Settlement of interconnection disputes falls under the general powers of the ECB dispute resolution.

The ECB may impose obligations on a service provider or release a service provider from the specified obligations, either on its own initiative or at the request of an interested person. The decision is made after an appropriate period of consultation (e.g. ten days for interconnection and access disputes) during which all interested parties must be given an opportunity to express their views.

If the petitioner so desires, the ECB may participate in the dispute as the conciliator. The petition sets out that the petitioner requests that the ENCB shall participate in the dispute as the conciliator. The ECB may not make a binding resolution.

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

Yes, regarding SMPs the ECB may impose obligations for cost orientation of prices and obligations concerning cost accounting systems. The Ministry of Economic Affairs and Communications regulation of 24 November 2005 sets forth the LRAIC method.

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 ECB may require an undertaking with SMP to give communications undertakings access to specific network elements or facilities, including the local loop. On 1 September 2007, a decision from the Ministry of Economic Affairs and Communications came into force whereby Elion as an SMP must unbundle their facilities in the local loop.

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?

As, for instance, IP protocol was widely used by the time of drafting the current electronic communications act and the other relevant regulations, use of the IP networks is addressed already.

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?

There are no general retail price controls. However, the controls such as determining and declaring the undertakings as undertaking with SMP are prescribed by the ECA. The ECB, based on market analyses, has used its right to declare operators as SMPs. For further details, please see question 1.7.

The universal service contract shall set out an affordable price charged for the provision of universal service from the end-user.

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

The provision of electronic communications falls under the general requirements of the ECA. In principle, general consumer protection regulations apply.

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

If a communications undertaking wishes to process, with the subscriber's consent, information which becomes known during the provision of communications services for marketing purposes, the undertaking is required to inform the subscriber, prior to obtaining consent, of the type of information needed for such purposes and the duration of the intended use of such information. A communications undertaking has the right to use information, which the undertaking is permitted to use for marketing purposes, only until it is necessary for achieving the relevant goal. If the subscriber so desires, the communications undertaking shall provide the subscriber with details concerning the use of the information.

6 Numbering

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

Numbering resources are managed by both the Ministry of Economic Affairs and Communications, and the ETSA. The Estonian numbering plan is established by the Minister of Economic Affairs and Communications and managed by the ETSA. Telephone numbers and network identifying codes are allocated by the ETSA. The Ministry of Economic Affairs and Communications can also impose additional terms and conditions regarding numeration.

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

The use of telephone numbers is governed by the ECA and the order of reserving numeration is stated in the regulation issued by the Minister of Economic Affairs and Communications.

Minister of Economic Affairs and Communications may establish additional obligations regarding publishing information on subscribers in public directories, the conditions for the use of numbering, publishing, transfer of the right to use numbers and reserving numbers to ensure public order and national security and the conditions arising from international agreements which concern the use of numbering.

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

The Estonian numbering plan shall determine the location in the Telephony Numbering Space of numbers, short numbers, identification codes and prefixes necessary for the provision of communications services, the requirements for their length, use and dialling procedure, and prefixes for services inside user groups which cannot be used by persons not included in the corresponding groups, and for several services connected with the numbers of end-users. Activation is stipulated in the subscription contract between the end-user and the service provider.

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

Pursuant to the number portability requirements of the ECA, a subscriber has the right to retain a telephone number belonging to the Estonian Numbering Plan upon the change of the geographical coordinates of the location of the subscriber's connection point. A service provider is required to provide a consumer with free information concerning the portability of numbers through telephone enquiries and on their website. The charge is cost-oriented and shall be paid by the service provider with whom the subscriber has entered into a subscription contract that provides the subscriber with an opportunity to keep the current telephone number.

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?

Pursuant to State Fees Act, the notice of commencement of

activities is free of charge. However, in order to be granted a frequency authorisation or a numbering licence the applicant shall pay state fee to the ETSA. The numbering licence state fee must be paid while submitting an application; where as state fee for the radio frequency authorisation must be paid five days after the restrictions and conditions notice from the ETSA.

8 Submarine Cables

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

A building permit for building at sea, in the territorial sea or inland sea must be issued in accordance with the Building Act.

9 Radio Frequency Spectrum

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

Radio frequencies are managed by the Ministry of Economic Affairs and Communications, and the ETSA. Chapter 3 of the ECA includes special provisions for radio frequency management.

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

The Estonian Radio Allocation plan distinguishes between the manner, regime and purpose of using radio frequencies.

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

The regulation of the installation and use of satellite earth stations falls under the ECA. Pursuant to section 20 of the ECA, the Minister of Economic Affairs and Communications may establish the conditions for the use of radio frequencies with regard to specified radio frequencies and technical requirements. Satellite earth stations must meet specific standards set by Chapter 3 of the regulation issued 13 April 2006.

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

In applying for the frequency authorisation the person shall submit to the ETSA a standard format application. The ETSA shall notify the applicant for frequency authorisation. If several persons apply for use of the same radio frequency simultaneously, the ETSA shall organise an auction for granting the frequency authorisation.

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

The Minister of Economic Affairs and Communications has the right, in determining the possibility of the use of radio frequencies without a frequency authorisation. In order to operate without the frequency authorisation, the apparatuses must meet harmonisation and safety requirements. Meeting these requirements must be assessed, certified

and controlled according to the harmonised standards methods. For technical quality, the standards must meet either the International Telecommunication Union recommendations or by default European Telecommunications Standards Institute standards or other publicly approved specifications.

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

A state fee must be paid in order to obtain or extend a frequency authorisation. Different state fees apply to different types of licences, depending on radio frequency band and other specifications.

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

The holder of a frequency authorisation has the right to partially or fully transfer the right to use radio frequencies defined in the frequency authorisation to another person if the right to transfer the corresponding radio frequencies is provided for in the Estonian radio frequency allocation plan. In order to transfer the right to use radio frequencies and to obtain the right to use radio frequencies, a corresponding application shall be submitted to the ETSA. The ETSA has the right to refuse transfer of the use of radio frequencies if it distorts competition.

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)?

Regarding radio frequency use, it is prohibited for third persons to intercept messages or data, except in the cases prescribed by law and to use and disseminate, illegally intercepted messages or data.

A communications undertaking is required to maintain the confidentiality of all information which becomes known in the process of provision of communications services, and which concerns subscribers as well as other persons who use the communication services. The specific data of communications services usage, the content and format of messages transmitted through the communications network and information concerning the time and manner of transmission of messages must be protected. This information may be processed if the subscriber is notified in a clear and unambiguous manner, of the purposes of processing the information, and given an opportunity to refuse the processing.

A communication undertaking must record and retain information listed in the ECA on each call/communication. The information must be retained for 1 one year from occurrence of the call/communication. During retention period surveillance and security agencies may request for disclosure of call/communication data.

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?

Internet regulation falls under the general electronic communications

regime. The only specific regulations about internet service providers concern universal service obligations. For further details, please see Section 12.

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

The Information Society Services Act deals with commercial communications which is defined as any form of communication designed to promote, directly or indirectly, the goods, services or image of a service provider. The commercial communication, and the person on whose behalf it is made, must be identifiable as such. Promotional offers, such as discounts, premiums and gifts, promotional competitions and games, must be clearly identifiable as such and conditions relating to the promotion must be presented clearly.

The Advertising Act provides: the definition of advertising, establishes general requirements for advertising, restrictions on advertising and their extent, special conditions for advertising, supervision regulations over advertising, and establishes liability for violation of the Act.

12 USO

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

Universal service is defined as a set of services which conforms to the technical and quality requirements established by EU law. This is of specified quality and available to all end-users requesting it to the extent provided in the ECA, regardless of their geographical location, uniformly and at an affordable price. Under the ECA, universal services include connection to the public telephone network, public pay-phone service, and access to a universal electronic Public Number Directory and directory enquiry services.

The basis for the universal service obligation (USO) and its conditions are set out in a universal service contract entered into between a communications service provider and the state represented by the Minister of Economic Affairs and Communications, or on his authorisation the ETSA.

The universal service is funded by the price charged by the end-user. The service charge is stipulated in the universal service contract and the service provider may submit an application to the ENCB for compensation for the unfairly burdensome costs relating to the performance of the USO.

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?

Electronic communication service providers who wish to provide a communications service in Estonia must be listed or registered as a branch in the Estonian central commercial register. There are no further requirements with regards to direct or indirect foreign ownership of interests in electronic communications service companies in Estonia.

14 Future Plans

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

Currently there are no significant changes in the legislative process. Only available draft law relates to specific log retention issues, namely specifying liability for breach of call log retention obligations.



Kaupo Lepasepp

Sorainen
Pärnu mnt 15
Tallinn
Estonia

Tel: +372 640 0900
Fax: +372 640 0901
Email: kaupo.lepasepp@sorainen.ee
URL: www.sorainen.com

Kaupo Lepasepp (Mr), senior associate, attorney-at-law and one of the infrastructures and commercial contracts experts in the office. Mr. Lepasepp joined the firm in October 2006. His key areas of expertise are trade and distribution and infrastructures (both regulatory and contractual issues) as well as ADR and litigation in aforementioned practise areas. In March 2006, Mr. Lepasepp qualified for representing clients in the Supreme Court (highest court in Estonia). Mr. Lepasepp has extensive work experience in the Estonian infrastructures (esp. pricing of and access to several transportation and communication networks, respective negotiations and litigations), services and international trade sector. His particular specialisation includes trade finance and pricing issues under competition law. Mr. Lepasepp is a member of Estonian Bar Association since 2003 and was appointed as a member of evaluation and examination committee of court bailiffs by the Minister of Justice of Estonia in 2008.



Ivar Kurvits

Sorainen
Pärnu mnt 15
Tallinn
Estonia

Tel: +372 640 0900
Fax: +372 640 0901
Email: ivar.kurvits@sorainen.ee
URL: www.sorainen.com

Ivar Kurvits (Mr.), associate, LL.M in Commercial Law (University of Edinburgh), is a member of Banking and Finance, Competition and Regulatory and Corporate Advisory Team. Before joining Sorainen Mr Kurvits worked with the Law Firm Teder, Glikman & Partners. His expertise includes advising clients in corporate law and competition law issues (merger notifications, abuse of dominant position, prohibited agreements). Mr. Kurvits is a member of the Estonian Bar Association since 2006 and the first president of the Baltic League of Competition Law (BLCL), an organisation under the umbrella of International League of Competition Law (www.ligue.org) uniting leading competition lawyers in private sector as well as in public sector (competition authorities, academic institutions and etc.).



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