

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

TWELFTH EDITION

Editor
Matthew T Murchison

THE LAWREVIEWS

THE

TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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PREFACE

This volume marks the 12th edition of *The Technology, Media and Telecommunications Review*, which has been fully updated to provide an overview of evolving legal and policy activity in this arena across 25 jurisdictions around the world. This publication continues to occupy a unique space in the literature on TMT issues. Rather than serving a traditional legal treatise, this Review aims to provide a practical, business-focused survey of these issues, along with insights into how this legal and policy landscape in the TMT arena continues to evolve from year to year.

In 2021, the ongoing covid-19 pandemic has continued to loom large over legal and policy developments in this sector. As the threat of infection has continued to affect how we live, work and interact, the importance of connectivity has never been greater or more obvious. For many businesses, remote working has been the rule rather than the exception since March 2020, and may well persist in some form well after the pandemic is over. Many schools switched to distance learning formats during the pandemic. Tele-health is on the rise as doctors check in on patients via videoconference. Even tasks as mundane as grocery shopping have shifted online. And broadband connectivity, where available, has made it all possible.

The experience of covid-19 has, in turn, continued to reshape policymakers' understanding of the TMT arena. The shift to remote working and distance learning has stress-tested broadband networks across the world – providing a 'natural experiment' for determining whether existing policies have yielded robust systems capable of handling substantial increases in internet traffic. At the same time, the pandemic has prompted new initiatives to ensure, improve and expand broadband connectivity for consumers going forward. In various jurisdictions, policymakers are moving forward with subsidy programmes and other efforts to spur the deployment of advanced networks more deeply into unserved and underserved areas. Regulators also have taken steps to preserve internet access where it already exists, including by exploring mandates prohibiting disconnection of customers or requiring certain rates for low-income consumers – measures that, where adopted, sometimes have sparked fresh legal challenges and policy debates over the relative merits of government intervention and market-based solutions.

New technologies likewise have required new approaches and perspectives of policymakers. A notable example is the ongoing deployment of 5G wireless networks, as regulators continue to look for ways to facilitate such deployment. These initiatives take a variety of forms, and frequently include efforts to free up more spectrum resources, including by adopting new rules for sharing spectrum and by reallocating spectrum from one use to another. Multiple jurisdictions have continued to auction off wireless licences in bands newly designated for 5G deployment, capitalising on service providers' strong demand for

expanded access for spectrum. The planned deployment of new satellite broadband services, including multiple large satellite constellations in low-earth orbit, also continues to be a focus of regulatory interest across the world.

Meanwhile, long-running policy battles over the delivery of content over broadband networks continue to simmer in various jurisdictions, and new fronts have opened on related issues involving the content moderation policies of social media companies and other online platforms. Policymakers continue to grapple with questions about network neutrality, the principle being that consumers should benefit from an ‘open internet’ where bits are transmitted in a non-discriminatory manner, without regard for their source, ownership or destination. While the basic principle has been around for well over a decade, unresolved issues remain, including whether newer kinds of network management practices implicate such concerns, and whether efforts to promote a healthy internet ecosystem are best served by light-touch, market-based regimes or by more intrusive government interventions. In the United States, the light-touch approach reinstated in 2018 seems fairly certain to be revisited at the federal level, and certain states are continuing to claim an ability to impose their own restrictions on internet service providers. Regulators around the world have begun taking more aggressive enforcement action against internet service providers’ zero rating plans, which exempt certain data from counting against a customer’s usage allowance. Regulators in Asia are grappling with similar policy questions. In addition, these neutrality principles, usually debated in the context of broadband networks, are now spilling over to the content side, where social media companies are facing increased scrutiny over claims of discriminatory practices in moderating content appearing on their platforms. Indeed, some jurisdictions are considering measures that not only would rescind immunities these platforms have traditionally enjoyed for their content moderation practices, but also would require increased transparency and potentially even impose anti-discrimination mandates or other consumer protections. In short, while the balance of power between broadband network operators and online content providers historically has turned on the degree of regulation of the former, both sides’ practices are now very much in the spotlight.

The following country-specific chapters describe these and other developments in the TMT arena, including updates on privacy and data security, regulation of traditional video and voice services, and media ownership. On the issue of foreign ownership in particular, communications policymakers have increasingly incorporated national security considerations into their decision-making.

Thanks to all of our contributors for their insightful contributions to this publication. I hope readers will find this 12th edition of *The Technology, Media and Telecommunications Review* as helpful as I have found this publication each year.

Matthew T Murchison

Latham & Watkins LLP

Washington, DC

November 2021

BELARUS

Kirill Laptev and Pavel Lashuk¹

I OVERVIEW

Building an information society is one of the priorities of the government of the Republic of Belarus. This approach is reflected in the Decision on the Strategy for Collaboration of the CIS States Parties in the Construction and Development of the Information Society for the Period up to 2025 and the Action Plan on its Implementation, adopted on 28 October 2016 in Minsk (CIS Decision). One of the tasks of Commonwealth of Independent States (CIS Member States' cooperation in the construction and development of the information society is the provision of services to citizens and organisations using modern information and telecommunication technologies. On 25 October 2019, the Council of CIS State Leaders adopted the Decision on the Concept of Cooperation of the States Members of the CIS in the Field of Digital Development of Society and the Plan of Priority Measures for its Implementation (Concept). The Concept aims to create a digital environment in the CIS space, accelerating the implementation of information and communication technologies, and creating conditions for the introduction of technologies that ensure the decentralisation, safety, security and openness of transmitted information and other types of technologies.

Another document defining the main directions of activity in the field of digitalisation is the Digital Agenda of the EAEU. The priorities for the implementation of this Agenda include approval of the concept and strategy of the digital transformation of the Eurasian Economic Union (EAEU) approval of the management structure for its implementation, creation of an investment fund, the harmonisation of the regulatory framework, and the development of cross-border telecommunications systems, cybersecurity, electronic identification and logistics.

Recently, the State Programme on the Digital Development of Belarus for 2021–2025 (State Programme) has been adopted. The State Programme is a strategy for the introduction of advanced information technologies in the national economy and society in the coming years. It provides for the implementation of such measures as the creation (development) of modern information and communication infrastructure, and the introduction of digital innovations in the sectors of the economy and technologies of 'smart cities', as well as ensuring the information security of such solutions.

One major innovative development in Belarus took place on 21 December 2017 when the President signed Decree No. 8 on the Development of the Digital Economy fixing progressive and unique regulation in the IT sphere on a global scale, as well as developing a

¹ Kirill Laptev is a senior associate and Pavel Lashuk is an associate at Sorainen.

regime for High Tech Park (HTP) residents. The HTP has been successfully operating for more than a decade, providing a beneficial taxation system to residents specialising in the IT sector.

The Decree also devotes special attention to the development of blockchain technologies and cryptocurrency payments.

Tokens are recognised as a legitimate object of legal relations. Tax privileges are introduced to operations with tokens, including trade in cryptocurrencies and initial coin offerings. Until 2023, individual revenues from mining and operations with tokens are not subject to declaration and taxation depending on the categories of the subject: a resident of the Belarus HTP, an individual or another entity.

Additionally, the special statuses of cryptographic platform operators and cryptocurrency exchanges have been introduced. For these, the Decree sets a minimum security value to be stored at Belarusian banks of not less than 1 million and 200,000 roubles respectively.

Among other privileges and benefits, HTP residents use simplified rules of company document control and a simplified system for foreign founders and employees, which additionally boosts the development of the technology, media and telecommunication (TMT) sector. Foreign employees and founders of HTP-resident companies are entitled to visa-free entry to Belarus for the duration of their temporary stay of 180 days.

II REGULATION

i The regulators

The central management body that is responsible for state regulation, coordination of work and development of the telecommunications sector is the Ministry of Communications and Informatisation (MinCom). The MinCom carries out:

- a* the development and implementation of telecommunication development programmes;
- b* the coordination of activities in the field of creation and development of telecommunication networks;
- c* the long-term planning of the use of the radio frequency (RF) spectrum by civil electronic radio facilities;
- d* the establishment of a unified procedure for the interaction of telecommunication networks through the public telecommunication network, as well as monitoring and centralised management of the public telecommunication network;
- e* the definition of requirements for:
 - the construction, numbering, and organisational and technical support for the operation of telecommunication networks, and their management, to ensure the protection of telecommunication networks from unauthorised access to them and messages transmitted thereon; t
 - the use of the RF spectrum;
 - the order of traffic transmission; and
 - the provision of telecommunication services;
- f* the regulation of the activities of telecommunication operators;
- g* international cooperation in the field of telecommunications, including interactions with international organisations and telecommunications administrations of other states, ensuring the fulfilment of obligations under international treaties of the Republic of Belarus; and
- h* the development and adoption of regulatory legal acts.

The Republican Unitary Enterprise for Telecommunications Supervision 'BelGIE' (BelGIE RUE) is a state agency that falls under the auspices of the MinCom. Among others, BelGIE RUE has the following main objectives:

- a* ensuring the protection of the RF spectrum and its effective use;
- b* assignment of RFs or RF channels;
- c* RF monitoring; and
- d* state supervision of telecommunications, etc.

In accordance with Edict No. 515 (see details in subsection ii), an Operational Analytical Centre (OAC) under the President of Belarus was designated as an independent regulator in the field of information and communications technologies (ICT). The OAC, in the role of an independent regulator, focuses on ensuring the successful operation of the Unified Republican Data Transmission Network (URDTN²) and the ICT market in the field of data transmission. It also promotes the attraction of investments in the ICT sector and development of the telecommunication services market in terms of providing data and telephony services via IP-protocol, and monitors the market for data transmission services and analysis of its condition.

The State Commission on Radio Frequencies under the Security Council implements a unified state policy in the area of distribution and use of the RF spectrum.

The leading operator of the Republic in the telecommunication services segment is Beltelecom RUE.

Activities in the field of data protection are carried out by an authorised body for personal data subjects' rights protection (the Data Protection Authority), the creation of which is planned for the near future.

ii Main sources of law

The main legislative acts regulating the TMT sector in Belarus are the following:

- a* Law of the Republic of Belarus of 19 July 2005 No. 45-Z on Telecommunications (Telecom Law);
- b* Law of the Republic of Belarus of 15 December 2003 No. 258-Z on Postal Communication (Post Law);
- c* Law of the Republic of Belarus of 10 November 2008 No. 455-Z on Information, Informatisation and Protection of Information (Information Law);
- d* Law of the Republic of Belarus of 7 May 2021 No. 99-Z on Personal Data Protection (Personal Data Protection Law) (in force since 15 November 2021).

In addition, the President of Belarus has adopted a number of decrees regulating the TMT sector. In practice, they all have greater legal force than laws, due to the fact that in accordance with the Law of the Republic of Belarus of 17 July 2018 No. 130-Z on Normative Legal Acts, in the event of divergence from presidential edict or decree with the law, the law has primacy only when the authority to issue an edict or decree has been granted by law.

2 URDTN construction allows for the centralised management of data transmission networks in Belarus and creates conditions for accelerated economic growth in the field of communications by eliminating administrative barriers. The business sector is also able to use the services of the URDTN.

Thus, the main regulatory presidential acts in the TMT sector are as follows:

- a* Edict of the President of the Republic of Belarus of 18 April 2006 No. 240 on payment for the use of the radio-frequency spectrum;
- b* Edict of the President of the Republic of Belarus of 1 September 2010 No. 450 on licensing of certain types of activities (Licensing Law);
- c* Edict of the President of the Republic of Belarus of 1 February 2010 No. 60 on measures to improve the use of the national segment of the Internet (Edict No. 60);
- d* Edict of the President of the Republic of Belarus of 30 September 2010 No. 515 on certain measures for the development of the data transmission network in the Republic of Belarus (Edict No. 515);
- e* Edict of the President of the Republic of Belarus of 15 April 2013 No. 192 on the allocation, use of the radio-frequency spectrum and introduction of changes and additions to Presidential Decree of 31 July 2006 No. 473;
- f* Edict of the President of the Republic of Belarus of 23 January 2014 No. 46 on the use of telecommunication technologies by state bodies and other state organisations; and
- g* Edict of the President of the Republic of Belarus of 15 March 2016 No. 98 on the improvement of the procedure for the transmission of telecommunications messages.

The media sector is mainly regulated by the Law of the Republic of Belarus of 17 July 2008 No. 427-Z on Mass Media (Mass Media Law).

The State Security Committee and the Ministry of Internal Affairs, having consistently formed the legal framework for ensuring the safety of critical facilities in Belarus, adopted Joint Resolution No. 24/268, which approved the Regulations on Preventive, Regime and Organisational Measures to prevent terrorist activities and minimise their consequences for critical objects Belarus.

Edict of the President of the Republic of Belarus No. 449 on the improvement of state regulation in the field of information protection of 9 December 2019 has approved the Regulation on technical and cryptographic information protection and the Regulation on the assignment of information objects to critical objects of informatisation. They define the notion of a critically important object of informatisation and establish the procedure for classifying objects of informatisation as critically important and ensuring the security of critical information objects.

iii Regulated activities

Communications

The TMT sector is strictly regulated by numerous state authorities. In this context, according to the Licensing Law, the provision of main telecommunication (TCM) services is subject to obtaining a licence. Such licensed activities include:

- a* public TCM services;
- b* international telephone communication;
- c* long-distance (inter-city) telephone communication;
- d* local telephone communication;
- e* data transfer service, including voice over internet protocol, internet protocol TV (IPTV);
- f* fixed and mobile satellite TCM services; and
- g* cellular communication.

The Licensing Law also outlines the following public postage services: mail transfer and receipt of a subscription to a printed mass media and printed media delivery.

The Licensing Law expressly outlines the activities that may be conducted without a licence:

- a* rendering telematic services;
- b* receipt of a subscription to a printed mass media carried out directly by a legal entity entrusted with the functions of the editorial office of the given mass media; and
- c* certain provision of data transmission services via the internet at points of shared use of internet services (computer clubs, internet cafes, etc.).

The general licence requirements and conditions for the licensee are as follows:

- a* compliance with the requirements and conditions established by the Post Law and Telecom Law;
- b* the presence of not less than one specialist on the staff who has duly confirmed professional training and qualifications corresponding to the profile of the services provided;
- c* the permission of the authorised organisation for the right to use the RF spectrum when providing public telecommunication services using the RF spectrum;
- d* observing the terms of the commencement of services provision specified in the licence; and
- e* provision of public telecommunication services using the licensee's telecommunication networks with the permit to connect them to the public telecommunication network and to the URDTN.

The licence for communication services may be granted after an application has been made or as a result of tender proceedings (e.g., for RF spectrum usage). In any case, the licence is issued by the MinCom for a unlimited period.

Media

There are certain additional authorisations needed to carry out activities in the media sector.

According to the Mass Media Law, mass media (e.g., printed mass media, TV or radio programmes and channels) is subject to a state registration procedure. It may be distributed from the date of its inclusion in the State Register of Mass Media.

TV and radio broadcasting in Belarus is additionally subject to obtaining a licence, which may be obtained by the editor of the mass media or by a foreign organisation.

A broadcasting licence is required for mass media editors and foreign companies broadcasting a TV channel or a radio channel in Belarus. The licence is not required if the TV and radio broadcasting is carried out by a telecommunications operator without changing the form and content thereof:

- a* on the basis of a permit to distribute the products of a foreign mass media;
- b* under a contract with a legal entity entrusted with the functions of the editor of the mass media; or
- c* if the foreign organisation has a licence in the field of broadcasting.

However, advertising regarding the products of foreign television media distributed on the territory of the Republic of Belarus without changing the form or content is not allowed. An exception is provided for, inter alia, advertising integrated into a programme during its production and, being an integral part of this programme, social advertising.

Recent changes to the Advertising Law have clarified that the exclusion of advertising from the products of foreign television media or its replacement with social advertising does not constitute a change in the form or content of the products of foreign television media.

iv Ownership and market access restrictions

Belarusian law establishes certain ownership restrictions within the TMT sector.

Certain restrictions apply to foreign participation and investments in the TMT sector. Generally, a legal entity cannot act as a founder of a mass media if 20 per cent or more of its shares are owned by a foreign state, entity, individual, international entity or individual without citizenship. An exception is made for cases when the founders of such a legal entity are foreign states together with the Republic of Belarus. Foreign legal entities, foreign citizens, stateless persons as well as legal entities with foreign participation cannot be founders of the mass media at all.

Because spectrum is considered a rare resource, its management and use is reserved to the state. This is particularly reflected in the application of a tender procedure for obtaining a licence.

According to the Decision of the OAC under the President of the Republic of Belarus, the Ministry of Communications and Informatisation of the Republic of Belarus of 10 February 2014 No. 1/2 on approval of the list of telecommunication operators entitled to pass inter-network traffic, only three state-owned entities are authorised for internetwork traffic transmission. Two of them are additionally entitled to pass international traffic and join foreign states to telecom networks under the Order of the OAC of 6 December 2012 No. 91.

v Transfers of control and assignments

As a general rule, communication licences may not be transferred or assigned to third parties. TMT licences may only be granted to legal entities of Belarus.

Mergers and acquisitions of TMT entities are subject to general antitrust legislation requirements.

Recently, a representative of Belarus held a meeting with the management of Turkey's largest telecommunications company, Turkcell Group, to discuss the issues regarding conducting business in Belarus for the mobile telecommunications operator, (life:), as well as creating conditions for a small operator to successfully operate in the cellular market.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The internet and internet protocol comprise a developing sphere of Belarusian law. As a result, Belarusian law is structured as technology-neutral and does not provide specific legislation for internet and internet protocol services. Such services are mainly regulated by the general TMT legislation.

ii Universal service

In accordance with the Edict of the President of the Republic of Belarus dated 16 January 2020 No. 13 on the Republican Fund for Universal Service of Communications and Informatisation, Belarus has set up a republican fund for universal communication and

informatisation services since 1 January 2020. All telecoms operators operating in Belarus transfer 1.5 per cent of their revenues to a state non-budgetary fund. The fund's managers are the MinCom and state bodies that are customers of state programmes (subprogrammes), as determined by the President. The funds involved have a special purpose, in particular, compensation for the capital construction of infrastructure for the provision of universal telecommunication services. Universal telecom services include access services to the fixed telecommunication network using the terminal subscriber unit and the internet at points of shared use.

In 2021, the funds were planned to be directed to the activities of the State Programme 'Digital Development of Belarus' for 2021—2025 including:

- a* capital investments related to the provision and development of public telecommunication services, the provision of which the state guarantees to all users of universal telecommunication services; and
- b* scientific research, experimental development and experimental technological work, and capital investments to implement measures in the field of informatisation.

In accordance with the Resolution of the MinCom dated 16 January 2021 No. 1, the functions of the compulsory provision of universal postal services throughout the territory of Belarus are assigned to the Republican Unitary Enterprise Postal Communication Belpochta.

iii Restrictions on the provision of service

Although telecoms operators are generally free to establish the prices for their services, Belarusian law establishes certain price limits charged to end-users. The Ministry of Antimonopoly Regulation and Trade is the main regulatory authority for the specification of such thresholds. It carries out state price regulation for telecommunication services and the postal communication of public services according to the list determined by the Resolution of the Council of Ministers of 17 January 2014 No. 35 on approval of lists of socially significant goods (services), prices (tariffs) which are regulated by state bodies, and the recognition of certain decisions of the Council of Ministers of the Republic of Belarus as invalid (Price Regulation List). The Price Regulation List has a tendency to liberalisation through the exclusion of telecom services from the state pricing regulation. The granting of access to the internet at points of shared use was excluded in 2017 from the Price Regulation List.

As a general rule, telecoms operators are obliged to provide their services to everyone who applies for them, and may not prefer one person to another in relation to the conclusion of a contract for the provision of services. Refusal to conclude a contract with an opportunity to provide services at hand is prohibited.

Following amendments to the Mass Media Law made in 2021, the approach to the procedure for blocking internet resources has been adjusted. For now, restrictions of access to internet resources and online media shall be made if:

- a* owners of the internet resource during the year were issued two or more demands to eliminate (prevent) violations or, for owners of the online media, two or more written warnings were issued from the Ministry of Information (MinInfo);
- b* they contain information that is prohibited or restricted from distribution in accordance with the legislative acts of Belarus, as well as legally enforceable court decisions;
- c* the owners of the internet resource did not comply with the lawful demand of the MinInfo to eliminate violations of the legislation of Belarus regarding mass media, or did not notify MinInfo and did not provide documentary evidence of such elimination;

- d* there is a binding legal decision to eliminate (or prevent) violations (relevant for situations where MinInfo cannot issue such demand in the absence of an email of the internet resource owner and the internet resource itself is outside of the national segment of the internet); and
- e* they contain information messages or materials, or both, the dissemination of which may harm the national interests of Belarus (based on a decision of the Interdepartmental Commission on Security in the Information Sphere).

In addition, restrictions on access to internet resources and online media can be made based on a resolution of the Prosecutor General, a prosecutor of a region and the prosecutor of Minsk in cases where disseminated information may harm the national interests of Belarus.

After the MinInfo decides to restrict access it submits its decision to the BelGIE RUE. Subsequently, BelGIE RUE forms the list of restricted access, which is the ground document to be followed by internet service providers in further direct restriction of access procedures.

iv Privacy and data security

The basic confidentiality concept is contained in Article 28 of the Constitution of the Republic of Belarus (Constitution). It provides that everyone has the right to protection from unlawful interference in their private life, including interference with correspondence, telephone and other communications, and protection of their honour and dignity.

Lawful interference is mainly regulated for national security purposes by the Telecom Law, the Information Law, the Personal Data Protection Law, the Law of the Republic of Belarus of 15 July 2015 No. 307-Z on Investigative and Search Activity, the Code of Criminal Procedure and other legislative acts. According to the above-mentioned legislation, lawful interference covers a broad scope of measures, including receipt, transformation and recording of data and messages received, transmitted, processed and stored in telecommunication networks as well as identification of service receivers.

The Telecom Law prescribes network operators' obligations when carrying out investigative and search activities, inter alia:

- a* to provide information on users of telecom services and on the telecom services rendered to them, as well as other information necessary to fulfil the tasks assigned to investigative bodies;
- b* to assist in carrying out investigative and search activities and to provide an opportunity to conduct them on TMT networks, and to take measures to protect information about organisational and tactical methods for carrying out these activities; and
- c* to provide access to databases and automated systems, etc.

The Personal Data Protection Law will come into force on 15 November 2021. The Personal Data Protection Law follows the basic concepts of Convention 108+ and the General Data Protection Regulation (GDPR), including the main principles of ensuring data privacy; however, it is still not very detailed and mostly uses different terminology from the GDPR. It provides, inter alia, for certain criteria necessary for consent to be proper. In particular, consent must be informed (i.e., certain information must be provided to the subject before obtaining the consent). The operator is also obliged to explain to data subjects, in simple and clear language, their rights related to the processing of personal data, the mechanisms for exercising these rights, and the consequences of giving or denying consent. Various forms of consent are envisaged: in addition to written consent, consent can be obtained by virtue of a short

message service (SMS) with a code, by email or by ticking a box on a website. The Personal Data Protection Law introduces a list of cases where obtaining consent is not required, as well as the requirement for processing to be proportionate to its purposes. Such purposes should be legal, specific and stated in advance, and should also ensure a fair balance between the interests of all interested parties at all stages of processing. The storage of personal data should not continue for longer than the stated purposes of processing require. Moreover, the Personal Data Protection Law regulates the cross-border transfer of personal data for the first time.

It also provides for the establishment of the data protection authority. The data protection authority – the National Personal Data Protection Centre of the Republic of Belarus – was established by the Edict of the President of 28 October 2021 No. 422 on Measures to Improve the Protection of Personal Data. The Personal Data Protection Law contains provisions regarding cross-border transfer of personal data (abroad from Belarus). In particular, the cross-border transfer of personal data to countries not ensuring sufficient measures of personal data protection is prohibited subject to a limited number of exceptions (e.g. individual permit of the Data Protection Authority).

The legal framework for the implementation of personal data regulation has also been prepared: administrative and criminal liability in the field of personal data has been introduced this year.

Since 1 March 2021, the illegal processing of data, or a violation of the rights of the subject of personal data or the rules for its protection, entails administrative liability. Depending on the violation, a sanction may be imposed on an individual (manager) or a company, and its size may vary up to 200 basic units, which is about US\$2,350.

Criminal liability in the field of personal data was introduced in June 2021. Sanctions are provided for certain cases of the intentional illegal collection, provision and dissemination of personal data, and non-compliance with protection measures for personal data. Criminal sanctions can be applied only to individuals (company officials) and provide for up to five years of imprisonment. The first precedents regarding enforcement of these provisions in the field of personal data processing have already emerged.

IV SPECTRUM POLICY

i Development

Regulation of the use of the RF spectrum is the exclusive right of the state. Edict of the President of the Republic of Belarus of 31 July 2006 No. 473 on the State Commission for Radio Frequencies under the Security Council of the Republic of Belarus regulates the use of the RF spectrum in Belarus to the State Commission on Radio Frequencies under the Security Council (Commission). The Commission decides on the allocation of RF bands, RF channels and RFs, and organises work on the conversion of the RF spectrum.

Owing to the wide development of modern radio technologies and new RF bands, the government has amended the procedure for determining the amount of annual, one-time fees and fees for allocating the RF spectrum. The Council of Ministers adopted Resolution No. 853 of 16 November 2017, according to which amendments were made to the amounts of the annual, one-time payments and fees for the allocation of the RF spectrum.

The indexes of the commercial value of the K1 RF spectrum, used in calculating the amount of spectrum charges, have been adjusted to create conditions for the successful development of the Long Term Evolution (LTE) cellular telecom network in the 2.6GHz band and to encourage the development of the LTE advanced networks in Belarus.

As such, the cost index for the 2.4835–2.7GHz spectrum, where mobile operators operate, has been reduced almost five times, from 5 to 1.1.

ii Flexible spectrum use

Belarusian law does not provide for much flexibility owing to the lack of free space in almost the entire RF range. Hence, it is quite heavily regulated.

iii Broadband and next-generation services spectrum use

A significant step in the liberalisation of RF spectrum usage was made in 2016. On 29 August 2016, the MinCom adopted Resolution No. 13, which entered into force on 21 September 2016. With the entry into force of the Resolution, it is possible to use, without registration and permits for the operation of broadband radio access equipment in the IEEE 802.11 group of standards (WiFi technology) both inside buildings and structures and in vehicles, as well as a wide range of low-power devices of global systems for mobile communications, universal mobile telecommunications services and LTE technologies, and radio stations of seagoing ships that have the right to sail under the Belarus national flag. It is possible to use certain types of satellite subscriber terminals without the need to obtain permits for their operation.

Today, there is an infrastructure operator called beCloud in Belarus, which is engaged in the development of LTE networks and allows other companies to operate them to provide services to their subscribers.

iv Spectrum auctions and fees

Belarusian law imposes spectrum usage fees on broadcasters, mobile phone carriers and other businesses that use the RF spectrum. The President may stipulate cases when the issuance of licences for the provision of certain components of the licensed services is carried out following the results of a tender for a licence. Pursuant to this, Resolution of the Council of Ministers of the Republic of Belarus No. 1259 of 30 September 2009 establishes the Regulation on the procedure for conducting a tender (competition) for the use of the RF spectrum.

The legislative acts establish a one-off fee, an annual fee for the use of the RF spectrum and a fee for the allocation of the RF spectrum.

V MEDIA

i Regulation of media distribution generally

While the Mass Media Law guarantees freedom of opinion, belief and expression to everyone in Belarus, it also establishes certain restrictions on information that may be disseminated through mass media. Among other things, the following is prohibited:

- a* a call for the consumption of narcotic drugs, psychotropic substances and their analogues, and toxic and other intoxicating substances, and dissemination of information on the methods of their development, production and consumption;
- b* a call for and the promotion of war, extremist activities, pornography or violence; and
- c* information disseminated by an entity without due state registration, if needed.

Since 1 December 2018, the Mass Media Law has contained a definition of internet resource: a website, web page, forum, blog, application for a mobile device or other information

resource (its component), located on the global computer network internet, through which mass media is distributed. Unless indicated otherwise, the Mass Media Law applies to internet resources. Internet resources may be registered as online media and, consequently, be treated as mass media under the Mass Media Law.

Certain regulations apply specifically to internet resources. The Mass Media Law provides for a number of duties for internet resource owners, including social network owners, which involve the introduction of additional measures for analysing and monitoring information on such internet resources. In particular, further to the Mass Media Law requirement, the Regulation on the procedure for preliminary identification of users of an internet resource, an online media, approved by the Resolution of the Council of Ministers of the Republic of Belarus of 23 November 2018 No. 850, elaborates the requirements of user identification. The owner of the internet resource or online media will identify users when leaving a message in the comments or on the forum via an SMS verification mechanism.

Amendments to the Mass Media Law have introduced a simplified procedure for the restriction of access to copies of already prohibited internet resources. Now, when a copy is found, the MinInfo sends a corresponding notification to the BelGIE RUE to include the identifier of this resource in the restricted access list. This is carried out within one day of receiving the notification. If a copy of the internet resource is located in the national segment of the internet, its owner is notified.

ii Internet-delivered video content

Internet services are available in Belarus, including IPTV channels with programming provided by programme providers. Current legislation does not provide for internet-delivered video content (over-the-top (OTT)) regulation.

The need for OTT services regulation was discussed during a roundtable in Minsk by representatives of the MinInfo, interested departments, television channels, cable operators and the Telecommunications Industry Union. The chair of the Telecommunications Industry Union outlined that, owing to the absence of regulation, telecommunication operators working in the lawful field faced unfair competition from OTT services. OTT services carry away subscribers: the annual outflow of subscribers is at least 10 per cent. In most cases, OTT services:

- a* do not pay taxes;
- b* are not registered in the register of distributors: that is, they provide TV programmes without contracts with rights holders;
- c* do not pay for related rights;
- d* do not make contributions to the National Centre of Intellectual Property; and
- e* do not distribute mandatory programmes of the public package.

OTT services are planned to be regulated by government rules and regulations in the future.

VI THE YEAR IN REVIEW

Considering the events of the past year, we can say that Belarus is charting a course for the development of its IT infrastructure in many areas.

The most notable and long-expected change of 2021 is the adoption of the Personal Data Protection Law, which establishes the legal basis for regulating the sphere of personal data in Belarus, and emphasises the recognition of the importance of its protection and a

readiness to develop in this direction. A new technical administrator of the national domain zone has been appointed in Belarus starting from 2022. The functions of the technical administrator will be performed by the beCloud. Currently, the national domain zone ('.by' and '.бел') has about 150,000 registered domain names.

The second stage of large-scale testing of 5G in Belarus took place this year. In accordance with the plans, testing was continued in already established testing zones as well as in newly created test zones (including the premises of the National Airport and the Minsk underground railway).

On 1 September 2021, Belarus and Russia officially reduced roaming tariffs, which had previously been launched in test mode. The reduced tariffs will now be in effect permanently until the complete cancellation of roaming, which is scheduled for 1 January 2022.

In March 2021, the HTP Administration was given the authority to monitor activities in the field of digital finance. According to the First Deputy Prime Minister, Belarus had to ensure the existence of an appropriate state agency that would control the activities of crypto platforms. Currently, due to a suitable legal environment, the field of digital finance is actively developing in Belarus (for example, a new crypto stock exchange was established in the summer of 2021).

Section 3 of the Edict of the President of the Republic of Belarus of 7 August 2018 No. 305 'on Improvement of Legal Regulation of Gambling Business' entered into force on 1 April 2021; it seeks to prohibit the marketing of gambling services having no local Belarusian licence and provides a mechanism for blocking access to such unlicensed gambling websites. Based on the comments of the regulator, there have been more than 1,000 cases of blocking of foreign gambling sites due to their non-compliance with local legal requirements.

In general, the blocking of internet resources for non-compliance with the requirements of local legislation has noticeably increased recently.

In July 2021, the draft Edict on the issues of automobile passenger transportation (draft Edict) has been introduced for public discussion. The draft Edict provides for the introduction of certain changes in the transportation sector, which, inter alia, may affect the operation of local fleets and taxi aggregators (platforms like Uber) operating in the Belarusian market. For example, it is planned that taxi aggregators will be required to obtain a specific type of licence. Currently, the timeline of the document's adoption is unclear.

Since 1 September 2021, biometric documents have started being issued in Belarus. There are two main types of documents:

- a* an ID card, which is a document for internal use and which is valid only in the territory of Belarus; and
- b* a biometric passport, which is required for cross-border travelling.

The new documents will be used in parallel with the current Belarusian passport until the expiration date of the latter.

VII CONCLUSIONS AND OUTLOOK

The increasingly frequent development of TMT in Belarus comes with a lack of relevant legislation, although there is progressive legislation in particular spheres. Within a process of post factum regulation, the government is trying to steer a middle course between the national interests of TMT infrastructure control and the development of the TMT sector by private investors. Depending on the particular approach in different TMT spheres, the

development of both legislation and the TMT sector itself affects national economy indexes as well as the development of the information society. At the same time, Belarus is trying to implement and follow the strategy of front-running rather than pursuing in the field of technology regulation and use.

In 2021, the focus remains on creating a regulatory framework for the development of TMT. The changes made to legislation have affected, among other things, the media sphere, data protection and electronic services.

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Kirill is head of the technology, media and telecommunications (TMT) sector group in Belarus.

Kirill leads most of the IT-related projects coordinating the TMT team in Belarus. Kirill's key areas of expertise include commercial contracts and regulatory matters. He is highly experienced in advising major international clients of the TMT sector in their distinctive projects involving Belarus on complex matters such as the special regime for residents of the High Tech Park, including IT-related tax matters as well as new crypto regulations and blockchain projects and IP matters in IT, and legal due diligence for IT companies with unique experience of dispute resolution in IT. Kirill also is one of the shortlisted specialists in the country for data protection and privacy matters both on a national level and from an EU perspective, with a deep understanding of GDPR specifics. He also represents clients in their relations with higher state authorities in significant projects in the telecoms sector in Belarus, as well as advising international companies on online media regulations.

Kirill is frequently invited as a speaker to IT-related events for lawyers and IT businesses as well as writing on the topic of IT law. Due to his reputation as TMT sector group leader and a key expert in the IT sphere, he has been recognised as one of the 'Next generation lawyers for commercial, corporate and M&A' by *The Legal 500* along with nominations for arbitration and trade and customs by *Who's Who Legal*.

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