

European Electronic Communication Code adopted

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What happened?

The Law of 17 December 2021 on electronic communications networks and services ("**Law**") was published on 22 December 2021 and came into force on 26 December 2021. It repeals the former regime set out by the Law of 27 February 2011 on electronic communications networks and services.

What is the main takeaway?

The new legislative regime transposes into Luxembourg law the European Electronic Communications Code ("**EECC**") established by Directive (EU) 2018/1972.

The EECC forms part of a package of telecom laws and aims at updating the rules governing the telecoms sector. It regulates electronic communications networks and services with new or revised rules and sets out tasks for national regulatory authorities, in Luxembourg the *Institut Luxembourgeois de Regulation* ("**ILR**"). The ILR is a member of the Body of European Regulators for Electronic Communications ("**BEREC**") set up by one of the laws of the EU telecom package. The Law also integrates certain national provisions not originating from the EECC but from the Law of 21 March 1997 on telecommunications (pushed since then into the Law of 30 May 2005 on electronic communication networks and services).

What are the main changes?

The general objectives of the EECC are to promote connectivity through and access to high capacity networks (such as 5G networks), effective competition, the security of networks and services and addresses the needs of certain social groups, in particular people with disabilities. The EECC aims at taking into account today's reality of the provision of digital services: the convergence of

telecommunications, media and information technology.

In order to follow these general political objectives, the EECC notably requires that local regulation and regulators (i) provide operators with predictable regulation, (ii) ensure there is no discrimination between network and service providers operating under similar circumstances, and (iii) apply the regulation in a technology neutral fashion whenever possible and relevant.

Consequently, the scope of the Law, regulating the electronic communications, now also extends to many over-the-top players ("**OTT**"), i.e. personal communication services not subject to numbering resources such as messaging apps (including instant messaging, electronic mail and video conferencing), streaming services and connected devices. Both types of services are now subject to *ex ante* supervision. Security requirements for OTT services should, however, be adapted as they are considered in general as presenting lower risks than traditional electronic communication services as they do not control the effective convey signals over networks (with some exceptions).

Consumer protection is reinforced (information to be provided prior to the conclusion of a contract for communication services, possibility to compare offers, tariffs and quality of services, possibility to monitor the level of consumption of services included in a subscription) and the universal service now incorporates adequate and affordable access to broadband Internet.

In terms of security, the Law provides for the possibility of taking certain measures (including prohibition) for the use in public networks of equipment or software which are the source of a serious threat to the security of networks and services and having an impact on national security. This aims in particular at remedying threats related to the intrusion or interference from private or public third-party players on electronic communications networks and services, an outside control over them, or even espionage situations. This task is entrusted to the Government Council on proposal from the relevant ministry, with the assistance as appropriate of the National Committee of Communications. Nevertheless, it remains the operators' own responsibility to ensure the security of their networks.

Content is not regulated under the EECC, which focuses on electronic communications networks and services.

What's next?

Operators of telecommunication networks and related services are generally already well informed of the applicable regime. OTT service providers, however, are not necessarily familiar with electronic communication services regulation and need to understand how their own services may be affected and how to comply with the regulatory changes.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

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