

Draft Law implementing the European Electronic Communications Code in Luxembourg

What happened?

On July 16 2020, the Luxembourg Minister of Communications and Medias presented **draft Law No. 7632** on the European Electronic Communications Code (the “**Draft Law**”) to the Chamber of Deputies. The Draft Law aims at implementing into Luxembourg law the **Directive (EU) 2018/1972** of 11 December 2018 establishing the European Electronic Communications Code (the “**EECC Directive**”)¹.

What is it about?

The EECC Directive aims to harmonise the regulation of electronic communications networks, electronic communications services and associated facilities and services through the European Union. It also outlines the tasks incumbent on the national regulatory authorities (in Luxembourg, the *Institut Luxembourgeois de Régulation*). At national level, the Draft Law implementing the EECC Directive intends to repeal and replace the amended **Law of 27 February 2011** on networks and electronic communications services while keeping some of the specific provisions which do not derive from or are not affected by European law.

What are the main expected innovations?

As new features, the EECC Directive and the Draft Law:

- Extend the legislative scope of electronic communications to non-numbering-based interpersonal communications services, the **over-the-top services** (the “**OTTs**”). Messaging services such as Apple iMessage, WhatsApp, Facebook Messenger, Webmail services (e.g. Gmail) or voice/video calls such as FaceTime or Skype are now

within the scope of the legislation and **may be subject to *ex ante* supervision**. Like any other provider of communications services, OTTs will be required to provide information to the *Institut Luxembourgeois de Régulation*, be subject to security audits and be subject to investigations in the event of non-compliance.

- Aims at progressively reducing *ex ante* regulation of dominant operators as competition intensifies to create **effective and sustainable competition** with a positive impact on prices, quality and choice for end-users.
- Promote the **deployment of very high-capacity** communications networks by granting to the electronic communications operators a right to access all public physical infrastructure, including street furniture such as street lights, street signs, traffic lights, billboards, bus and tramway stops.
- Prohibit any unnecessary restrictions on the interconnection of access points to local wireless networks allowing the **sharing of private WiFi**.
- Harmonise radio spectrum management for electronic communications networks and services and impose the release of the frequency bands needed for the deployment of the 5G technology at the latest on 31 December 2020.
- Promote access to high speed internet at an affordable price as a **universal service**.
- Harmonise and **strengthen consumers' rights** by requiring operators to provide specific information to consumers prior to entering into a contract.

Additional Luxembourg specificities provided by the Draft Law

The Draft Law extends the obligations of the EECC Directive to impose additional obligations on electronic communications operators.

Article 42 of the Draft Law concerning the security of networks and services provides for **an obligation to notify** the *Institut Luxembourgeois de Régulation* "without delay" of the technical and organisational security measures implemented. This requirement is not imposed by the EECC Directive, but already exists under Luxembourg law for the providers of public electronic communications networks and electronic communications services available to the public.

Article 114(3) of the Draft Law lists the main elements of information required to be contained in the contract summary to be provided to the consumer before entering into the contract. In the event that the contract summary cannot be provided at that time, the Draft Law provides that the contract will take effect after the consumer agrees "in writing or on any other durable medium" after having been provided with the contract summary. The requirement to obtain the agreement of the consumer "in writing or on any other durable medium" is not expressly imposed by Article 102 of the EECC Directive and constitutes an additional obligation in the Draft Law.

What's next?

The Luxembourg Draft Law is currently being discussed at the Chamber of Deputies as part of the legislative procedure. It is subject to potential amendments to take into account the upcoming opinions of the Council of State and other institutions. Consequently, the final law to be adopted may deviate from the Draft Law in its legal provisions. Depending on the pace of the legislative process, we do not exclude that the law may be adopted by year end or shortly after.

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→ [5G: Opportunities and Legal Challenges - Part 2. Deployment of 5G in Luxembourg](#)

→ [5G: Opportunities and Legal Challenges](#)

→ [1. Directive \(EU\) 2018/1972](#) of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, which is a recast of the 2002 Telecom Package including the (i) Access Directive 2002/19/EC; (ii) Authorisation Directive 2002/20/EC; (iii) Framework Directive 2002/21/EC; and (iv) Universal Service Directive 2002/22/EC.

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