

REVIEW AND ANALYSIS OF NOVELTIES IN THE DRAFT TEXT OF THE NEW LAW ON ELECTRONIC COMMUNICATIONS

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Abstract: The Law on Electronic Communications in N. Macedonia regulates the specific matter related to electronic communications. In the last few decades, there have been several versions of this law, the content of which is often changed and amended and is regularly harmonized with the regulation from the European Union. Currently, a draft text for a new Law on Electronic Communications is being prepared, with the aim of harmonizing it with the European Code of Electronic Communications (Directive 2018/1972, or COD Directive), adopted by the European Parliament and the Council of the European Union in December 2018. In this paper, after a brief introduction and overview of the Macedonian market of electronic communications, the reasons for adopting a new law are presented. The paper systematically presents and analyzes in detail the novelties that will be introduced with the new Law on Electronic Communications.

Key words: electronic communications; Law on electronic communications; networks;
very high capacity networks; services, competition

ПРЕГЛЕД И АНАЛИЗА НА НОВИНИТЕ ВО НАЦРТТОТ НА НОВИОТ ЗАКОН ЗА ЕЛЕКТРОНСКИ КОМУНИКАЦИИ

Апстракт: Законот за електронски комуникации во С. Македонија ја регулира специфичната материја поврзана со електронските комуникации. Во последните неколку децении имаше неколку верзии на овој закон, чијашто содржина често е менувана и дополнувана и редовно усогласувана со регулативата на Европската Унија. Во тек е подготовка на предлог за нов закон за електронски комуникации, со цел негово усогласување со Европскиот законик за електронски комуникации (Директива 2018/1972, или COD-директива), кој Европскиот парламент и Советот на Европската Унија го донесоа во декември 2018 година. Во овој труд, по краткиот вовед и преглед на македонскиот пазар на електронски комуникации, презентирани се причините за донесување на нов закон. Трудот систематизирано ги презентира и детално ги анализира новините кои ќе се воведат со новиот закон за електронски комуникации.

Клучни зборови: електронски комуникации; закон за електронски комуникации; мрежи;
мрежи со многу голем капацитет; услуги; конкуренција.

1. INTRODUCTION

Macedonian market of electronic communications creates total annual revenues of more than 300 million euros and it shows an increasing trend in the last few years. The market is mainly regulated by the Law on Electronic Communications [1], as well as other applicable laws.

The European Parliament and the Council of the European Union adopted the European Electronic Communications Code (Directive 2018/1972), or COD Directive on December 11, 2018 [2]. This Directive covers four directives: Directive 2002/19 [3], Directive 2002/20 [4], Directive 2002/21 [5], Directive 2002/22 [6] and Regulation (EC) No. 1211/2009 [7] of the European Parliament and of the Council of the European Union.

The convergence of the telecommunications, media and information technology sector means that all electronic communications networks and services should be covered by a single European Electronic Communications Code, established by a single Directive, while it is necessary to separate the regulation of electronic communications networks and services from the regulation of content. Therefore, this Directive does not cover the content of services provided over electronic communications networks, such as broadcasting content, financial services, and certain information society services.

In order to harmonize the existing regulation for electronic communications in the Republic of N. Macedonia with this directive, the Minister of Information Society and Administration of the Republic of N. Macedonia has established a working group for the drafting of a new Law on Electronic Communications in 2023. The draft text of this law was prepared and published on ENER system [8] in order to receive opinions and comments from all interested parties.

The draft text of the Law on Electronic Communications is structured in 19 chapters, and this paper lists and analyzes the novelties in relation to the existing Law on Electronic Communications that are proposed and implemented in this draft text of the new law. The paper is organized as follows: in Section 2 we summarize the trends of the Macedonian market of electronic communications and the main reasons for the adoption of the new Law on Electronic Communications; in Section 3 novelties in the new law are analyzed in details. Finally, we present our concluding remarks in Section 4.

2. TRENDS IN MACEDONIAN MARKET OF ELECTRONIC COMMUNICATIONS AND SUMMARY OF REASONS FOR ADOPTING THE NEW LAW

As mentioned in the introduction, Macedonian market of electronic communications creates total annual revenues of more than 300 million euros in the recent years, showing an increasing trend. Total annual revenues of the Macedonian market of electronic communications for the period 2010–2022 is presented in Figure 1, according to the annual reports on the development of the Macedonian market of electronic communications [9] published by the Agency for Electronic Communications (www.aec.mk). After the obvious decreasing trend in the period 2010–2015, followed by a relatively stable period

(2015–2021), the market has increased by 6.8% in 2022.

Figure 2 presents the number of notified and active entities participating in the Macedonian market of electronic communications in 2022, distributed in the defined seven services (S1–S7).

The annual report for 2023 is expected to be published by the Agency for Electronic Communications in October 2024.

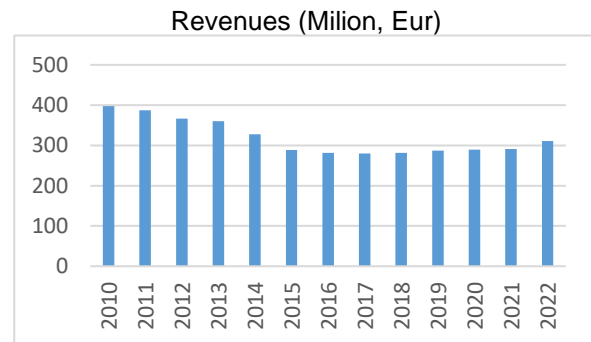


Fig. 1. Total annual revenues in the Macedonian market of electronic communications in the period 2010–2022 (Source: Agency for Electronic Communications – www.aec.mk)

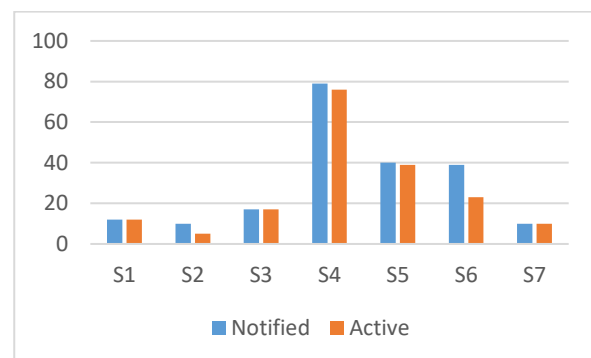


Fig. 2. Number of notified and active entities participating in the Macedonian market of electronic communications in 2022 (Source: Agency for Electronic Communications – www.aec.mk)

In a small economy, as it is the Macedonian case, a market of such size is a significant contributor, so the analyses of the applicable laws which regulate the market and consequently can significantly affect the market, are highly relevant. This market is mainly regulated by the Law on Electronic Communications, which is in a constant process of harmonization with the directives of the European Union.

In addition to compliance with the COD Directive, mentioned above, the main reasons for

adopting the new Law on Electronic Communications, are listed below:

- Encouraging the development of electronic communication networks and services in order to ensure economic and social development;
- Encouraging investments in public electronic communication networks by introducing new technologies and services, especially networks with very high capacity;
- The protection of the rights of end users, including end users with disabilities and end users with special social needs;
- Ensuring efficient and sustainable competition;
- Interoperability of electronic communication services;
- Provision of universal service;
- Effective use of the radio frequency spectrum and numbering; and
- Ensuring the security of networks and services.

3. ANALYSIS OF THE NOVELTIES IN THE NEW LAW ON ELECTRONIC COMMUNICATIONS

In the following subsections, the proposed novelties in the new Law on Electronic Communications are analyzed in details, according to the structure of the draft text, organized in 19 chapters.

a) Chapter I – *General provisions*

In Article 3 of this Chapter of the law, which refers to definitions, terms and expressions used therein, the existing definition of publicly available telephone service is replaced by the definition of voice communication service. This is because technological and market developments have led more and more networks to switch to Internet protocol (IP) technology, allowing end users to choose from a number of competing voice service providers. Therefore, the term "publicly available telephone service" is considered to refer to traditional analog telephone services and should be replaced by the modern and technologically neutral term "voice communication service". The nature of this service is its bi-directionality, which allows both parties to communicate, and also includes communication tools specifically intended for end users with special needs who use text or full chat services.

In this direction, new definitions are introduced such as: Communication service between

persons, Communication service between persons that uses numbering, and Communication service between persons that does not use numbering.

The definition of Subscriber is replaced by the definition of Consumer, and due to its compliance with the Law on Consumers of the Republic of N. Macedonia.

In addition to the term operator, a new term network operator is introduced, which covers not only the legal entities that provide public electronic communication networks, but also the legal entities that provide physical infrastructure, such as production, transport or distribution services of gas, electricity, including public lighting, heating, water, discharge or treatment of waste water and sewage, and drainage systems, as well as transport services such as: railways, roads, ports, and airports.

In order to ensure more efficient communication with emergency call services, new definitions are introduced such as: public safety answering point (PSAP) and most appropriate PSAP.

New definitions are also being introduced that clarify the concepts of digital radio and digital television.

b) Chapter II – *Jurisdiction over electronic communications*

Number in order to ensure a distinction between policies and regulatory activities in the field of electronic communications, as a competent authority, in addition to the ministry responsible for matters in the field of electronic communications and the Agency for Electronic Communications, the Government of the Republic of N. Macedonia is also involved with decisively and taxatively determined competences.

This part of the draft text of this law determines the general goals that the Agency for Electronic Communications should achieve in order to ensure their achievement. The goals are presented in Table I.

The provisions relating to the Agency for Electronic Communications, as an independent, non-profit regulatory body of the markets for electronic communications in the Republic of N. Macedonia, its competence, the accountability for its work which it presents to the Parliament of the Republic of N. Macedonia by submitting a report, no later than 31 March in the current year, the transparency and influence of the public in relation to its operation, remain unchanged.

Table 1

General goals of the Law on Electronic Communications

No.	Goal
1.	Access and use of networks with very high capacity.
2.	Promotion of competition in the provision of electronic communication networks and associated facilities, including effective competition in the infrastructure and in the provision of electronic communication services and related services.
3.	Removing obstacles and creating conditions for investment in electronic communication networks, electronic communication services, associated facilities, and services throughout the country.
4.	Provision of predictable regulation.
5.	Promotion of efficient, effective and coordinated use of the radio frequency spectrum.
6.	Open innovation approach.
7.	Creation and development of trans-European networks.
8.	Ensuring availability and interoperability of pan-European services and "end-to-end connectivity".
9.	Ensuring connectivity, widespread availability and use of very high capacity networks, including fixed, mobile and wireless networks and electronic communication services.
10.	Creating maximum benefits in terms of choice, price and quality based on effective competition.
11.	Maintaining the security of networks and services.
12.	Providing a high level of protection to end users taking into account their needs, such as affordable prices, especially for disabled end-users, elderly end-users, and end-users with special social needs, as well as the possibility of choice and equivalent access for disabled end-users.

The Commission for Electronic Communications and the Director of the Agency for Electronic Communications are again determined as organs of the Agency in this text of the draft law, so that in the conditions for appointing members of the Commission, the previous prerequisite for at least five years of appropriate work experience in the profession are replaced by at least 10 years.

The National Center for Response to Computer Incidents (MKD-CIRT), established in Article 28 of the draft text of this law, which was established by the existing Law on Electronic Communications [8], as a separate organizational unit within the Agency for Electronic Communications, continues to perform its function until the expiration of the term of two years from the date of entry into force

of the Law on Security of Network and Information Systems and Digital Transformation in the Republic of N. Macedonia [10].

c) Chapter III – Fees

The provisions of this chapter of the draft law, which refer to the financing of the Agency for Electronic Communications remain unchanged, with the exception of the provisions that refer to the financing of the Operational Technical Agency (OTA), which are deleted in this draft text of the law.

d) Chapters: IV – Supervision, V – Penalty authority, VI – Dispute resolution, and VII – Delivery, recording, storage, and publication of data and information

The provisions relating to the competence of the Agency for Electronic Communications to supervise operators and other legal and natural persons who perform activities of providing electronic communication networks and/or services from Chapter IV of this law, remain unchanged.

In the same fashion, there are no changes in the provisions of Chapter V, by which the Agency for Electronic Communications is determined as the competent penalty authority, and the provisions of Chapter VI, which regulate the procedure for resolving disputes led by the Agency for Electronic Communications between operators, network operators and operators, and between end-users and operators. Provisions of Chapter VII regarding delivery, recording, storage, and publication of data and information, also remain unchanged.

e) Chapter VIII – Conditions for provision of electronic communication networks and/or services

The provision of electronic communication networks and/or services in the territory of the Republic of N. Macedonia, in accordance with the provisions of this chapter of the law, is free, after prior registration of the legal or natural person who intends to provide public electronic communication networks and/or services and on the basis of a notification submitted to the Agency for Electronic Communications, before starting, that is, after a change or termination of the provision of public electronic communication networks and/or services. The provision of public electronic communication networks and/or services can be limited, if necessary, due to the application of special regulations

that provide for special treatment for foreign nationals, which is justified for the protection of public order, public safety, or human health.

f) Chapter IX – Construction of electronic communication networks and associated facilities

Public electronic communication networks and associated facilities, interfaces and other network elements should be planned, designed, built, maintained and operated in accordance with this law, regulations adopted on the basis of it, spatial planning and building regulations, regulations for the protection of the environment, as well as the regulations, standards and/or technical specifications contained in the recommendations of the European Union.

In order to ensure broadband access to the Internet, the draft text of this law introduces new provisions, established in Article 64 thereof, which refer to the obligations of the Electronic Communications Agency to manage, regularly implement and update it, at least every three years, the geographic review of the availability of electronic communication networks that can provide broadband access to the Internet. The geographic review includes a review of the geographic availability of the existing broadband networks in the territory of the Republic of N. Macedonia, and also includes the planned coverage with broadband networks, which cannot be longer than three years, including the networks with very high capacity, as well as data for significant upgrades or network expansion, to achieve data transfer of at least 100 Mbit/s.

In order to encourage investment and installation of elements of electronic communication networks to ensure transmission at high speeds, with the provisions of Article 69 of this law, an obligation is imposed on each network operator, based on a received written request from an operator of public electronic communication networks to provide access to its physical infrastructure, under fair and reasonable conditions and prices.

The provisions of Article 70 of this law, which refer to the Single Point of Information (SPI – ETI) that the Agency provides through a publicly available GIS platform, are unchanged.

g) Chapter X – Ensuring competition

The provisions of this chapter of the law aim to reduce the number of ex-ante regulatory obligations and ensure that electronic communications are regulated solely by the Law on Competition [11].

Given that electronic communications markets have been characterized by highly dynamic competition in recent years, it is necessary to impose ex-ante regulatory obligations only if there is no effective and sustainable competition. In order to provide adequate incentives for investing in new networks with very high capacity, to support innovations in Internet services rich in content, in addition to the obligations established in Articles 78 and 79 of this law, the Agency for Electronic Communications, may impose to operators who have control of access to end users, an obligation for interconnection, if it has not been established, an obligation for interoperability of services, an obligation to provide access to application program interfaces and/or to an electronic program guide, and also upon receiving a reasonable request, to impose an obligation to provide access to wire and cable installations, as well as to the associated facilities in buildings, or to the first point of concentration or distribution. The Agency for Electronic Communications may also impose on the operators an obligation for joint use of the passive infrastructure, or an obligation to conclude a contract for providing local roaming access.

h) Chapter XI – Regulation of operators with significant market power

In order to ensure competition in the markets for electronic communications in the Republic of N. Macedonia and to reduce or completely remove barriers to the entry of new operators, the Agency for Electronic Communications, based on an analysis of the relevant markets, determines operators with significant market power which may be imposed an obligation for transparency during interconnection or access, an obligation for non-discrimination during interconnection or access, an obligation to keep separate accounting during interconnection or access, an obligation to access and use built infrastructure, an obligation to ensure access and use of specific network assets, price control, and cost accounting obligation. In the draft text of this law, with the Article 94, a new obligation is introduced for the regulation of new network elements with a very high capacity. With this obligation, it is possible for operators who have been determined as operators with significant market power in one or more relevant markets to submit an offer to the Agency for Electronic Communications to undertake obligations that will enable joint investment in setting up new networks with very high capacity, consisting of fiber optic elements to the end user area or base station. The joint investment obligation includes an offer for co-ownership or long-term risk sharing,

through joint investment or through entering into a purchase and/or sale agreement with other operators.

The provisions relating to the obligation for functional separation, voluntary separation from a vertically integrated operator, have not changed.

Article 97 of the draft text of this law proposes a procedure for accepting obligations, according to which an operator with significant market power can submit to the Agency for Electronic Communications an offer for accepting obligations, applicable to its network, and related to the access conditions and/or the terms of the joint investment.

New provisions are introduced in Article 98 of this law, which regulate only wholesale operators. With them, it is determined that the Agency for Electronic Communications can designate an operator that is not present in any retail market, as an operator with significant market power in one or more wholesale markets.

The provisions relating to the regulation of the existing infrastructure and the regulation of retail services have not been changed.

i) Chapter XII – *Provision of universal service*

With the provisions of this chapter of the Law on Electronic Communications it is possible for the consumers of electronic communication services in the Republic of N. Macedonia to have access at an affordable price to an available and adequate service for broadband access to the Internet and a service for voice communication, with an appropriate quality of service, including basic connection at a fixed location, and the Agency for Electronic Communications can impose an obligation for affordable prices for services that are not provided at a fixed location, for the sake of full social and economic inclusion of consumers.

The prices of individual universal services should be affordable and the same throughout the territory where the designated operator provides the universal service.

Unlike the existing legal solution, with Article 105 of the draft text of this law, as other universal services for which, if the Agency for Electronic Communications deems it necessary, the following are determined: a complete directory for all end users, access to the service for providing information for the numbers of end users and public payphones.

Provisions relating to cost control, compensation of the net costs of providing universal service and the universal service compensation fund, remain unchanged.

j) Chapter XIII – *Rights of end-users*

One of the most essential issues that are regulated by the existing Law on Electronic Communications, and regulated in more details in the draft text of the new Law on Electronic Communications, are the issues of the rights of end users when using electronic communication services. The contracts that operators conclude with end users are an important tool for ensuring transparency and legal certainty for end users. Therefore, in the draft text of the law, special emphasis is placed on the obligation of operators of publicly available communication services, with the exception of transmission services used to provide machine-to-machine services, in a clear and comprehensible manner, available on a durable medium or in a document that is easily accessible and simple for electronic download, before concluding a contract, provide the end-user with all of the informations, in particular about: the main characteristics of each offered service, the minimum quality level of the offered service, price information, information for the duration of the contract, the conditions for its extension and termination, as well as for the possible compensations in case of termination of the contract.

In this direction, of particular importance is the provision that imposes on the operator who provides an internet access service or a publicly available communication service between persons, and is charged based on the duration or amount of consumption, the obligation to enable the end users monitoring and controlling the use of each of the contracted services, that is, to notify the end user before he reaches the limit in terms of duration or amount of consumption.

In the same direction of securing the rights of end users, there are also the provisions with which the Agency for Electronic Communications is obliged, through its website, to provide end users with access to an independent comparison tool that will enable them to compare and evaluate the different services, in terms of prices and quality of services.

In terms of ensuring the quality of services, a novelty in this draft text of the law is the provision that obliges the operator for its electronic communication network with a very high capacity, based on optics, to have a technical report from measurements of the quality parameters, which are issued by an appropriate accredited inspection body at a higher educational institution in the field of electronic communications.

k) Chapter XIV – Radio frequency spectrum

The radio frequency spectrum is a limited natural resource, a public good with significant social, cultural and economic value. The radio frequency spectrum of the Republic of N. Macedonia is managed by the Agency for Electronic Communications.

The provisions for the Radio Frequency Spectrum Allocation Plan, the Plan for Allocation and Use of Radio Frequencies, the principle of neutrality in relation to technologies, the principle of neutrality in relation to services, the conditions for the use of radio frequencies, as well as the procedures for issuing approval for the use of radio frequencies are also implemented in this draft text of the law.

This part of the law contains the provisions that refer to the renewal of the approval for the use of radio frequencies. With them, it is proposed that the Agency for Electronic Communications, ex officio or at the request of the holder of the authorization for the use of radio frequencies, determine whether there is a need for its renewal. If the holder of the authorization for the use of radio frequencies submits a request for the renewal of the same, it can do so at least five years, and at the latest one year before the expiration date of the validity of the authorization, and the Agency can ex officio carry out an evaluation procedure of the need to renew the authorization for the use of radio frequencies, at least two years before the expiration of the validity period of that authorization. If the Electronic Communications Agency makes a decision to renew the approval, it will issue a new approval to the holder of the approval for the use of radio frequencies, in which it can modify some of the conditions for the use of radio frequencies and oblige the holder to pay a one-time fee for the use of radio frequencies.

New provisions in the draft text of the Law on Electronic Communications are also the provisions for the duration and extension of the authorization for the use of radio frequencies. They regulate that the duration of the authorization for the use of radio frequencies for the provision of wireless broadband communication services cannot be shorter than 15 years, nor longer than 20 years. The Agency for Electronic Communications, at least two years before the expiration of the validity period of the approval, will carry out a procedure in order to evaluate whether there are conditions for extending the validity of the approval for the use of radio frequencies, while it may also decide to amend the terms of use of radio frequencies.

Another novelty in this part of the law are the provisions that refer to access to the radio local net-

work (RLAN). These provisions prohibit operators of public electronic communications networks and/or services from restricting or preventing an end user from accessing an RLAN of their choice, or from providing other end users with access to their RLAN networks. Also new in this chapter of the law are the provisions for the installation and operation of short-range wireless access points. These provisions propose that operators have access to any physical infrastructure owned or operated by a public sector institution that is technically suitable for the deployment of a short-range wireless access point.

l) Chapters: XV – Numbering, XVI – Digital radio and television services, XVII – Radio equipment and telecommunications terminal equipment

The provisions implemented in these chapters of the law are taken from the existing Law on Electronic Communications.

m) Chapter XVIII – Security and integrity of public electronic communication networks and services and protection of personal data

The provisions of this chapter of the law, and especially the provisions of Article 186, will be applied until the day of entry into force of the Law on Security of Network and Information Systems and Digital Transformation of the Public Sector in the Republic of N. Macedonia [10].

n) Chapter XIX – Penalty provisions

This chapter of the Law on Electronic Communications is harmonized with the Law on Misdemeanors [12].

4. CONCLUDING REMARKS

The paper presented and analyzed in details the novelties that will be introduced with the new Law on Electronic Communications in N. Macedonia. Currently, a draft text for a new Law on Electronic Communications is being prepared, with the aim of harmonizing it with the European Code of Electronic Communications (Directive 2018/1972, or COD Directive), adopted by the European Parliament and the Council of the European Union in December 2018. The process of preparation started in 2023, initiated by the Minister of Information Soci-

ety and Administration of the Republic of N. Macedonia, who has established a working group for this task. The first draft text of the new law was published on ENER system in January 2024 and it has received number of opinions and comments from all interested parties. The process of preparation/adoption of the new proposed law is postponed due to current election processes in the country. The content of the proposed new law on Electronic Communications might be further modified, depending on the comments from the interested parties, strategy of the new government, as well as the status and the final content of the proposed new law on the Law on Security of Network and Information Systems and Digital Transformation. When adopted, it is expected that the goals of the new Law on Electronic Communications, elaborated in this paper, will be achieved during its implementation.

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