

ELECTRONIC COMMUNICATIONS LEGAL FRAMEWORK GUIDE

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What is the general legal framework applied in Greece related to electronic communications?

General

Greece is following the EU legal framework implementing its primary legislation from the EU Framework consisted of the EC Directives 19, 20, 21, 22, 58 and 77 of 2002, Directive 24/2006 (amending D. 58/2002) and Regulation (EC) 1211/2009. The Implementation of the new rules published on 18 December 2009 (Directive 136 and 140 of 2009) that were to be transposed into the Member States' national laws by 25 May 2011 is expected in the following months.

The above framework has been transferred basically through Law 3431/2006 (Electronic Communications), Laws 2472/1997 and 3471/2006 (Data Protection), Law 3592/2007 (broadcasting and transmission of radio-tv content) and Laws 2251/1994, 3674/2008, 3917/2011 and P.D. 47/2005 (Privacy and Data Retention).

Electronic Communications market is supervised by three independent watchdogs, the telecommunications NRA (E.E.T.T.), the data protection authority (D.P.A.) and the privacy authority (A.D.A.E.). Lately also the Greek National Council for Radio and Television (NCRTV) has played a crucial role regarding Market 18, i.e. the Broadcasting Transmission Services. There is a lot of discussion lately regarding a possible merge of one or more of all these independent authorities, since it seems that their functions are overlapping in many cases, creating some regulatory confusion.

More detailed secondary legislation applies regarding specific issues:

Local Loop Unbundling is regulated by Regulation No 2887/2000 of the European Parliament and Law 3431/2006 that provides for the obligation of with Significant Market Power to provide Fully Unbundled Access to the Local Loop to new entrant enterprises in this particular field of activity, under the same terms, with the same quality and at the same timeframes as those applicable to them. EETT has adopted several RUOs regarding LLU costs and regulations and has imposed heavy fines on the incumbent operator for delays in LLU.

Antennas' construction is regulated by Laws 3431/2006 and 2801/2000 and EETT Regulation 406/22/2006. For the licensing and construction of an antenna (or base station) the operator needs to have a valid lease agreement for the use of the plot or the building, an approved environmental study, an approval by the Atomic Energy Committee (EEAE) and a license for the construction and authorization to use the specific part of the available spectrum issued by the EETT. The local planning authority

approval is not a prerequisite but still an essential since its absence obliges EETT to revoke its license. In practice, due to the heavy bureaucracy implemented, EETT when it finds that an antenna has not got all the necessary licenses and approvals (except the frequency license and the EEAE approval) is imposing a small fine and give some time to the operator to complete the licensing procedures.

Trespassing rights have been always a really headache for the operators since it implements discussions and negotiations with local authorities. For that reason in 2007 an art. 69A was inserted to basic Law 3431/2006 in order to set particular steps and impose specific obligations and time frames for granting trespassing rights. The article imposes also transparency and limits on the relevant costs in order to provide a clear and sufficient regulatory environment for the network deployment.

Interconnection and Leased Lines: All existing operators in Greece with an SMP in their outbound traffic are obliged to offer interconnection to any other operator demands so. The incumbent operator as well with the three mobile operators is required to have also reference offers approved by the EETT. OTE (the incumbent operator) is heavily regulated also on the leased lines rental both in circuits and half circuits.

How easy is to start offering electronic communication services in Greece?

Actually it is very easy, especially when it does not implement the use of scarce sources, such as reserved spectrum. General Authorizations are required for the engagement in all kinds of electronic communication activities related to electronic communication networks or/and services, according to Law 3431/2006 and the “Regulation on General Authorizations” (EETT Decision no 390/3/31-6-06). In fact anyone (aiming to provide public communication networks or publicly available electronic communication services, as well as persons operating special radio networks) has to complete and submit to E.E.T.T. a Registration Declaration for Engaging in Electronic Communication Activities under a General Authorization Regime. Usually this registration is a simple procedure and it needs an appointed proxy in Greece for contact purposes. For extra-EU persons or entities a representative within the EU is also needed.

This Declaration is required also for the provision of electronic communication services through the infrastructure of other operators and where the relevant activity requires also the use of numbers or frequencies, the operator shall have to prior secure the required rights of use.

The necessary legal documents submitted with the Registration Declaration, for Legal Entities residing in a European Union member-state, are the following:

- Legal documents proving the incorporation of the foreign legal entity and the appointment of its representatives, accompanied by a Hague Apostille and an attached official translation thereof in Greece.
- Legal documents proving the appointment of a proxy in Greece and a legal binding statement made by the said proxy that he/she has accepted his/her obligations. The proxy shall be a permanent resident of Greece and shall speak the Greek language.
- A copy of the attorney or proxy's Police ID Card or passport.

Those operating under a General Authorization regime shall pay a Declaration submission Fee (now equals to 300 euros) as administrative fees and an annual administrative fee, calculated as a percentage of the total gross income derived from the provision of public communication networks or publicly available electronic communication services under a General Authorization regime as follows:

Zone of total annual income (E) in EURO million	Administrative fee factor per zone
$E \leq 0.15$	0
$0.15 < E \leq 250$	0.0025
$250 < E \leq 750$	0.004
$750 < E$	0.0005

Are the relevant markets mature or congested? Is there space for newcomers?

According to some studies the Greek market has a lot of maturity signs but also a lot of still uncharted areas. For example it seems that the number of the fixed alternative operators is just enough for the double play market, but there is still room for services and network deployment in non-urban areas. In addition a whole new market for MVNOs may be created especially if the plans for merge of two out of three mobile operators are successful. .

MOBILE COMMUNICATIONS

In November 2011 the NRA concluded the second auction of the GSM licenses that were awarded in 1992 and were valid for 20 years. COSMOTE, VODAFONE-PANAFON and WIND were awarded the entire available spectrum in the 900 MHz and 1800 MHz band for a total price of 380.535.000 euros.

Vodafone and Wind have announced that they have started talks on the possibility to merge and that greatly reflects a reality of the market. If the merge concludes it shall alter the mobile market as, for time being Cosmote holds more than 45% of the relevant market and is about to exceed the threshold of being dominant.

FIXED COMMUNICATIONS

OTE is the incumbent operator still partly owned by the Greek State and managed by the German incumbent Deutsche Telekom. OTE is under heavy regulation since all fixed alternative operators still depend on its copper network, leased lines and hubs for offering single and double play services. The cost of Interconnection, LLU services and leased lines rental are a subject of reference offers approved by the EETT.

OTE in 2008 revealed its plans to deploy a VDSL network while the Minister of Communications announced in 2009 a nationwide FTTh. Nowadays, that the VDSL technology seems obsolete, OTE has announced that it may move to an FTTC but shall never support a move to FTTh. On the other hand the economic crisis in Greece has delayed, if not stopped, the government's plans for rolling out an operator-neutral FTTh network. In any case EETT had proactively regulated the VDSL market and on December of 2011 approved the OTE's wholesale prices for the relevant services using a bottom-up

cost oriented method applied on the BRAS & DSLAM costs (since this is the first time the VDSL prices are measured).

The number of fixed alternative operators has decreased dramatically within the last two years due to intense competition. It seems that there is limited space for more fixed operators aiming to offer double play, especially in big urban areas, but very limited competition regarding services addressed to specific geographical regions. Other services offered by the fixed operators are the Wholesale Line Rentals (WLR) and the carrier preselection, but both are highly dependent on the incumbent's network and with a very narrow profit margin compared to LLU.

Many fixed operators have started deploying their own networks (mainly fiber rings) but not as much as to be completely out of a need for OTE's leased lines. Fixed Wireless Access is extremely limited since all efforts in offering LMDS or WiMAX services have failed to reach a "commercial" level so these networks are used only for network support, if any.

The latest market trend is that every mobile operator is affiliated, if not merged, with a fixed operator. Cosmote with OTE shall soon merge (but a relationship with the incumbent is not always a good thing), Wind was merged with fixed Tellas and Vodafone has a "close relationship" that turns to shareholding Hellas Online (which has bought also a fiber optics operator). With the obvious exception of Cosmote the other two mobile operators are able to offer double play services plus special reductions to mobile services, creating a highly competitive market for the other fixed operators.

Convergence is not a sci-fi in Greece. OTE, Forthnet, HOL and ON Telecoms have started to offer TV and content services through their networks some with interactive menus and extended VODs. Content regulation and regulation of Market 18 (Broadcasting transmission services) still presents some difficulties (see below section 6).

Is online gambling allowed in Greece?

A recent study made by the University of Economics in Athens revealed that e-gambling is rapidly increased in Greece. More than 31% of our fellow Greeks that go online have used at least once an e-gambling service, while 12% of them are regular players. They estimate that the turnover of this business exceeded in 2010 the 300 million Euros and it is not coincidence that the traditional lotteries have seen a 15% decrease of their sales. The strict regulation against any form of gambling away from the state owned national lottery and OPAP led to a de facto new market, totally out of any control. In addition Greece is paying penalties for as long as it maintains a monopoly in gaming as the ECJ has ordered.

After a long debate and pressure from international companies and the EU the Law 4002/2011 was issued in order to fix all pending issues with gambling in Greece including e-gambling. It seems though that the relevant minister (initiated probably by some recent case law of the ECJ) decided to maintain the dominant power of the state owned gaming operator OPAP by awarding it with the unique license to operate automatic gambling machines. Regarding online casinos the Law provides that the Minister of Economics will decide in a later stage the number and the terms of licensing.

The Remote Gambling Association (RGA) and six Greek casinos have resourced to the European Commission against that Law for breaching some fundamental principles of the EU such as the freedom of establishment, the freedom of rendering services, competition and state aid.

How Internet and online services are regulated in Greece?

The P.D. 131/2003 (implementing Directive 31/2000/EC) provides that the provision of services of information society are free and protected, the provider cannot be liable for illegal content and data transferred that is not moderated (hands off provision) and the law applies is the one of the operator's domicile. Of course all the consumer protection legislation also applies, especially in e-commerce activity.

Freedom of expression is constitutionally guaranteed and still none of the existing legal instruments allow for a lawful interception for breaching IP rights. Bloggers are protected and usually they do not face the heavy penalties the law provides for defamation through mass media (see relevant article of Spiros Tassis in DiMEE 2006, p.518, cited in all the relevant court cases).

Intellectual Property is highly respected in Greece and the relevant Law 2121/1993 has been updated to regulate IT and online IP breaches. There is no specific provision equal to the French "three strikes" or the British "Digital Act" so generally the operators are not obliged to deny access to Internet to users that illegally download protected content. Creative Commons also apply in Greece.

It still seems to be pretty much market space for VAS in the Greek market. Applications and content management together with online media are an upcoming business with a strong potential.

What about ip tv and internet media?

Law 3592/2007 in coordination with the basic Law 3431/2006 set the details on broadcasting through communication networks. Broadcasting can be realized either with the use of specific spectrum or through wired broadband.

A dual authorization scheme has been created according to which the national committee for radio-television (NCRTV) grants the right for the content while the EETT authorizes for rendering the relevant communication services (Market 18). Accordingly the communications operators may find themselves liable for transferring illegal content and lose their license. In addition there is limited regulation over video on demand and no decision on the digital dividend. This complex environment adds to the difficulty of the project but it seems that most of the problems are disappearing, since EETT has taken decisive steps on safeguarding this market.

Can I be a domain name registrar in Greece? What about electronic signatures?

Domain Names are regulated by the EETT Decision no 592/012/2011 on "Regulation on Management and Assignment of [.gr] Domain Names".

Any person or entity is allowed to become a registrar as soon as possess the building facilities and information systems infrastructure enabling them to respond duly to their obligations and have available their own Name Servers (at least two)

According to P.D. 150/2001 which implemented Directive 99/93/EC and Law 3431/2006 and several secondary legislation issued the EETT is the authority responsible for control and supervision of certification-service providers for electronic signatures which are established in Greece, as well as for ascertaining compliance with “secure signature creation devices”.

EETT by issuing several Decisions has established a solid regulatory framework but the truth is that electronic signatures are not commonly used since e-government is very limited. It seems though that there is an upcoming demand on certification since all transactions with the state soon shall be realized only through online means.

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