

The Impact of the New Telecom Law on End Users

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As of December 27, 2011, Emergency Government Ordinance 111/2011 regarding electronic communications - published in the Official Gazette, Part I, no. 925/27.12.2011 – represents the new normative act establishing the framework applicable in the electronic communications sector at national level.

Even though the main objective of the new ordinance was the implementation of EP Directive 2009/136 and of EC Directive 2009/140 of the European Parliament and Council, it centralizes under one umbrella the provisions of several prior normative acts, such as those regarding access to public electronic communication networks and the related infrastructure as well as their interconnection, the general framework governing communications or universal service, as well as the rights of end users regarding the electronic communication networks and services.

In order to provide end users with better protection, significant amendments were made to the legal provisions related to the providers' obligation to be transparent in the process of informing the public as well as with respect to the contractual clauses. To these provisions are added the ones that existed before the entry into force of the new ordinance pursuant to a series of decisions by ANCOM, as long as they are not contrary to the new amendments (e.g., regulations concerning the obligations to inform the end users or setting forth the related parameters). For instance, according to the new framework, providers must include in the contracts information regarding the categories of measures that can be taken in case of certain incidents, threats and vulnerabilities with respect to the security or integrity of the network or of the services, as well as information concerning the conditions for limiting access to or the use of certain services and applications or the procedures for measuring and managing the traffic in order to avoid the congestion of network segments or their use at maximum capacity. Another novelty with respect to the regulation concerns the initial duration of the contract concluded with a natural person user, which may not exceed 24 months, the providers having also the obligation to provide services with a contractual term of maximum 12 months. It should also be noted the legal person user's right to ask the provider to conclude a contract respecting certain minimum conditions set forth by the new ordinance to the benefit of the natural person user.

Special attention was paid to disabled end users, whose rights have been provided and expanded so as to ensure that they benefit from the same offer of services and conditions under conditions equivalent to the ones applicable to most end users. Another element of novelty is the fact that the ordinance has a separate section dedicated to the contracts concluded by remote communication means; thus, ANCOM's duties related to monitoring and sanctioning extend also to this category of contracts; the new provisions render the stipulations of Ordinance 130/2000 on consumer protection and the remote execution of contracts no longer applicable in the field.

Unlike the former framework regulation, the new ordinance introduces more detailed provisions with respect to the providers' obligations to ensure the security and integrity of networks and of electronic communication services; the main objective being to ensure a higher level of protection of personal data and of the users' privacy. The new ordinance provides that the network security level must correspond to the identified risk and prevent or minimize the impact of security incidents on the users and on the interconnected networks. Furthermore, the measures taken must secure the integrity of the networks and the continuity of the provision of services through such networks, and the providers even have the obligation to cooperate with each other, where necessary, for the purpose of implementing them. The method of implementing the aforementioned obligations can also be established by ANCOM provided that it undergoes a public consultation procedure.

From the perspective of promoting the competition on the retail markets, we note an increasing tendency to deregulate it. However, where no actual competition on a retail market is found and the obligations imposed at wholesale market level are not sufficient to create an adequate competition framework, ANCOM will be allowed to impose the necessary measures for the purpose of protecting the interests of end users and promoting the competition on the market. However, these competences of ANCOM may not affect the legal provisions applicable in the competition law field.

Certain amendments have also been made with respect to the procedure for resolving disputes arising between end users and providers, and the new framework expands ANCOM's scope of competence. Thus, the authority can also resolve disputes regarding the enforcement of the contractual clauses or relating to rights conferred by the law. Moreover, the new regulation eliminates ANCOM's obligation to grant a term of at least 30 days for the notice of default, during which the provider could justify or remedy the notified breach. Currently, the authority can apply the sanction even if the provider remedies the breach with respect to which the notice was issued.

ANCOM is expected to finalize during the first half of this year a guide intended to support the providers of electronic communication services in the implementation of the new legal provisions.
