

IT&C legal framework in Romania

Communications

In November 2002 Romania closed the 19th chapter of negotiations to join the European Union, becoming **the first country in Europe**, which is using the new communication *acquis*, adopted at the beginning of 2002. The completion of the regulatory framework initiated by MCTI lead to the full transposition of the *acquis communautaire* on: the regulatory framework for electronic communications networks and services, including the creation and installation of a regulatory authority (the National Regulatory Authority for Information Technology and Communications) and the establishment of the regulatory principles, allocation and assignment of radio spectrum, management of numbering resources; the authorization of electronic communications networks and services, including granting of the rights to use radio frequencies and numbers; the access to, and interconnection of electronic communications networks and associated facilities; the universal service and users' rights relating to electronic communications networks and services; the processing of personal data and the protection of privacy; the unbundled access to the local loop; the regulatory framework for radio spectrum policy; the competition in the markets for electronic communications services; the regulatory framework for postal services.

The **Law on the general regulatory framework for electronic communications networks and services** includes the main provisions on the authorization of electronic communications networks and services. The entry on the market of the providers of electronic communications networks and services is subject to general authorization in all the cases, with the only requirement of a notification on the starting up of the activity. The act on the general regulatory framework for electronic communications networks and services states the interdiction to grant any special or exclusive rights for the provision of electronic communications networks and services, the right of any company to provide electronic communications networks and services, insures access to networks and to the infrastructures provided by third parties and authorization under objective, non-discriminatory, proportionate and transparent conditions, application of the principle of non-discrimination by the vertically integrated operators, conditions for granting rights to use radio frequencies and numbers, as well as rights of way.

According to the law the **National Regulatory Authority for Information Technology and Communications (NRAC)** was set up in July 2002 The tasks assigned to this authority include the elaboration and adoption of regulations and also their enforcement, which will consist of the deployment of supervisory activities in order to achieve compliance with the obligations provided in laws, regulations and general authorizations or individual licenses. NRAC is independent from operators, service providers and equipment suppliers and there will be an effective structural separation of the regulatory function from activities associated with the exercise of rights deriving from the state's position as a shareholder in communications companies. NRAC also perform regulatory functions for the postal services sector.

On January 2002 the Romanian Government approved the **Ordinance on access to the electronic communications networks and to the associated facilities, as well as their interconnection**. Its provisions are organized around the following points of interest: defining

new concepts related to electronic communications, rights and obligations of the operators, powers of the national regulatory authority, possibility for the regulatory authority to impose specific obligations on operators with significant market power, a special attention was paid to the obligations for unbundled access to the local loop. The regulatory authority may impose on the operator with significant power on the market for local loop the obligation to publish a reference offer for unbundled access to the twisted metallic pair local loop.

In 2001 were adopted the first normative acts for the introduction of the unified emergency calls system “112” in Romania. The unified emergency calls system “112” is an important part of the universal service obligation and is specified in one of the most significant directives for telecommunications of the *acquis communautaire*. For the first time in Romania it is aimed to have a unified regulation for the unique European number for emergency calls, a unified technical and organizational system of receiving and redistributing the emergency calls that refer to fire emergencies, accidents, medical emergencies, natural calamities and other events which necessitate immediate intervention of the specialized services.

Also, today are in force the **Law for the protection of individuals with regard to the processing of personal data and the free movement of these data**, **Law regarding the processing of personal data and the protection of privacy in the telecommunications sector**.

In March 2003 was adopted a ministerial **Order regarding the selling and import of mobile phones**, which applies to the economic agents that sell mobile phones and deals with the enhancement of the degree of the buyer’s protection by providing suitable and complete information regarding the technical characteristics of the product and the level of radiations emitted by the purchased product.

In July 2003, the **Law 304/2003 regarding the universal service and the users’ rights related to the networks and electronic communications services** came into force. The law implements principles as the interdiction to grant any special or exclusive rights for the provision of directory services and to the objective, non-discriminatory and proportionate character of the mechanism for financing the net costs generated by the accomplishment of the universal service obligations. The universal service in communications implies the access to a minimal set of quality services, offered at a reasonable cost all over the country. This aspect requires an increased regulatory attention for two situations: persons with small incomes and areas where there is a high cost for the provision of services. MCTI will issue, in the next period, the policies and strategies for the implementation of the universal service in Romania.

Information Technology

MCTI promoted beginning with 2001 a legislative package that aimed to establish the **legal framework for the development of the Information Society services** in Romania. Today are in force the **Law regarding the electronic signature**, the **Law regarding the payment of local taxes using electronic means** and the **Law regarding public acquisitions through electronic means**, as well as the **Law on electronic commerce** and the legislation **regarding cyber-crime**.

The e-commerce Law stipulates heavy punishments for the possession of equipments with the intention of falsifying electronic payments instruments: 6 months to 5 years of prison; unauthorized access into an information system: 3 months – 3 years of prison or fine; unauthorized

data transfer: 1 – 12 years of prison or fine; unauthorized change of data stored within an information system: 3-15 years of prison or fine.

The law no 8/1996 on copyright and the Law no. 213/2002 consolidates the legislative framework for the development of the Information Society in Romania. Since 2002, the Romanian Organization for Copyright protects the copyright in Romania and insures the law enforcement. The acquisition of new technologies is done by contract, using license agreement. Public campaigns are organized for the training and the information of enterprises as well as individuals. As part of the fight against the software piracy, the Government decided to start the negotiations with Microsoft Romania in order to sign an agreement for obtaining licenses for the use of software programs, offering advantageous conditions for the public authorities.

In completing the legislation regarding global income tax, the Emergency Ordinance 94/2001 was passed by the Government at the initiative of the MCTI. The Emergency Ordinance provides **total exemption from taxation of the incomes of the employees of the private companies having the activity object classified into computer programs development**. This allows a better income for high-skilled professional in the IT sector and a higher growth capacity for software-developers producers in Romania.

Also, in 2003, as part of the reform process ongoing in Romania, was approved Law 161 regarding the measures to ensure the transparency in exercising the public dignities, functions as well as in the business environment, which comprises a whole chapter dedicated to the digital reform in Romania: Title II - „**Transparency through electronic means in providing public information and services**” and establishes the national e-Government portal.