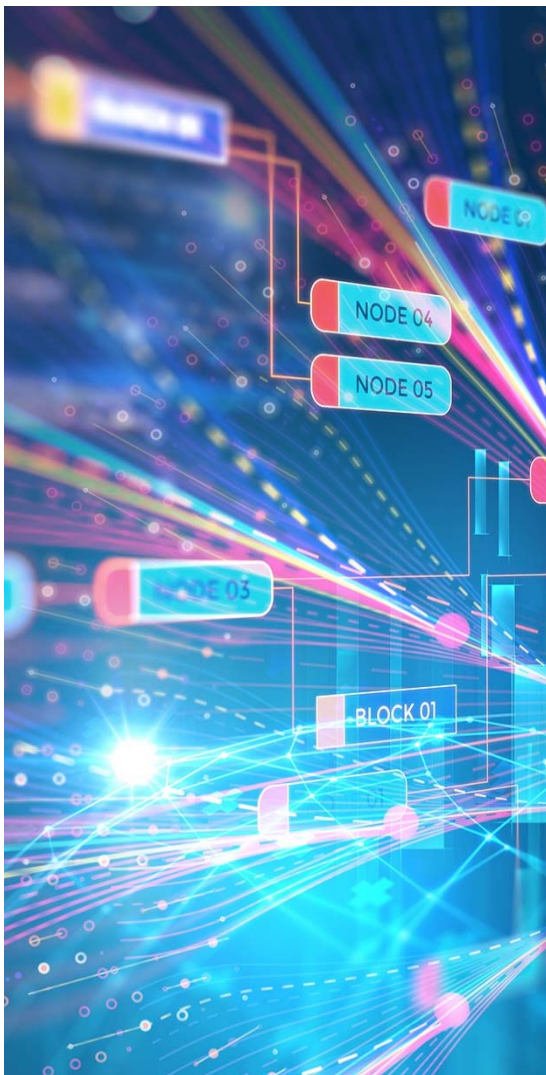

Spain adopts new Telecommunications Act

Act 11/2022 (“TA”) transposes the European Electronic Communications Code and introduces relevant modifications for sector enterprises

Legal flash

June 2022



Key aspects

- The new act transposes Directive (EU) 2018/1972 establishing the European Electronic Communications Code (“ECC”).
- It establishes a single information point for processing permits concerning network deployment.
- It includes the new classification of electronic communications services.
- It provides a notification system for the deployment or operation of submarine cables.
- It strengthens user rights.
- It streamlines the processing of the general operators fee.



Network provision regime and service provision under conditions of free competition

- **New ECS classification:** The Spanish Telecommunications Act (“TA”) includes the new classification of electronic communications services (“ECS”) provided in [Directive \(EU\) 2018/1972](#), establishing the European Electronic Communications Code (the “Code”) and modifies the classification applicable until now. Services will be classified as follows: (i) Internet access services; (ii) interpersonal communications services (“ICS”), i.e., services that enable direct interpersonal and interactive exchanges of information via electronic communications networks between a finite number of persons, where the persons initiating or participating in the communication determine its recipient(s). ICS do not include services enabling interpersonal and interactive communication merely as a minor ancillary feature linked to another service. ICS are divided into number-based and number-independent services (depending on whether they connect or enable communication with numbers in the numbering plan); (iii) services consisting wholly or mainly in the conveyance of signals. Although the conveyance of signals is still an important parameter to determine the services included within the scope of application of the regulation, the new classification covers other services that allow communication, regardless of who is conveying the signals. Thus, it is not based on strictly technical parameters, but on a functional approach that seeks to ensure that end-users will be effectively protected when they use services with an equivalent.

As under the previous Telecommunications Act 9/2014, to classify as an ECS, the service needs to be provided normally in exchange for remuneration. In this regard, Directive (EU) 2018/1972 clarifies that the concept of remuneration should adapt to the new digital economy and encompass situations where the end-user knowingly provides personal data and other data that allows access to information without actively supplying it (such as information collected and transmitted by a cookie), and situations in which the end-user is exposed to advertisements as a condition for gaining access to the service.

- **Ex ante market regulation:** The Spanish Markets and Competition Commission (“CNMC”) retains the power to define the relevant markets, laying down specific obligations if it finds entry barriers, a market structure not tending towards effective competition, or if necessary to appropriately address any market failure.
- **Notification or communication of ECS to the Register of Operators:** Before starting their activities, all providers other than number-independent ICS providers will still be required to notify the provision of ECS to the CNMC’s Register of Operators. However, operators interested in providing number-independent ICS must notify the start of their activity to the



Register of Operators for purely statistical and census purposes. Operators already providing these services must give notification within two months from the entry into force of the TA. Similarly, operators providing (i) ECS under self-provision mechanisms; and (ii) network access through wireless access systems or other RLANs will not be subject to the notification regime if this access is not part of an economic activity or it is ancillary to the main economic activity. The TA establishes in a legal provision the same approach the CNMC has taken to this matter in recent years.

- **Notification of IXP and submarine cables:** Services consisting in the deployment or operation of internet exchange points (IXP) and submarine cables interconnecting electronic communications networks located in Spanish territory must be notified to the Ministry of Economic Affairs and Digital Transformation. The right holders and managers currently providing these services must give notification within two months from the entry into force of the TA.
- **Numbers for non-operators:** The TA allows for adopting implementing regulations to grant rights of use for numbers to enterprises not qualifying as operators for the provision of specific services.
- **The use of non-geographic numbers in the EU:** Where technically possible, operators providing public networks and publicly available voice communications services will take the necessary steps to enable users to access their services using non-geographic numbers in the EU. Also, the TA provides the possibility for EU Member States to adopt a common numbering plan.
- **Number portability charges:** The TA prohibits that end-users be charged directly for retaining their numbers (which used to be allowed, although with certain restrictions).

Public service obligations

- **Universal service:** The appointment of operators responsible for securing universal service obligations will be governed by a royal decree that will provide for a public tender procedure. The minimum download speed required of a broadband connection changes from 1 to 10 Mbps. According to the TA, it may be increased to 30 Mbps through a royal decree as soon as possible. Also, under the TA, operators providing broadband internet access and voice communications through an underlying connection at a fixed location must offer consumers



with a low income or special social needs tariff options or packages different from those provided under normal commercial conditions, and price caps may even be required.

- **Other public service obligations:** In line with the previous [Telecommunications Act 9/2014](#), additional public service obligations may be imposed on operators for safeguarding national security and defense, public safety, road safety, civil protection and territorial cohesion, or for extending the use of new services and technologies, or for facilitating communication between certain groups or communities. The imposition of these obligations will be governed by a royal decree.

Operator rights and deployment of public electronic communications networks

- **Rights of use for the public domain:** Operators will be entitled to occupy the public domain as necessary to deploy public electronic communications networks under neutral, objective, transparent, fair and non-discriminatory conditions. The TA allows operators and public domain right holders or managers to enter into agreements to enable the simultaneous deployment of other services, related to enhancing the environment, public health or safety and civil protection, or to facilitate territorial cohesion. These services must be free of charge for public authorities and citizens.
- **Physical co-location and sharing of public or private property:** Operators providing public electronic communication networks may enter into agreements to determine the conditions governing (i) the co-location and sharing of network elements and associated facilities; and (ii) the sharing of the public domain or private property, subject to antitrust regulations.
- **Geographical surveys:** The Ministry will conduct annual geographical surveys on the reach and extensions of broadband networks. These surveys will include sufficient information on the quality of service and a forecast of the reach and extension of broadband networks.
- **Urban planning:** Public authorities must provide urban plans laying down the necessary telecommunications infrastructure, and an expedited procedure to decide on occupation applications, which cannot last more than four months from the filing of the application except in expropriation cases.
- **Installation and deployment of stations and networks:** For the installation or operation of radio stations or infrastructures and associated facilities on private property, public



authorities cannot require operators to obtain a license, unless (i) the land qualifies as historic-artistic heritage; (ii) their use exceeds 300 m²; or (iii) these facilities have an impact on nature protection areas. The installation or operation of fixed public electronic communications networks will be license-exempt if the operator has already submitted a network deployment plan providing for these infrastructures and this plan has been authorized. Public authorities may provide that for the installation and deployment of public electronic communications networks on public property (public domain), it may suffice for operators to submit an affidavit or a prior notification.

- **Single information point:** The Ministry will use the single information point to manage information on existing infrastructures. This single information point may provide operators with information regarding their infrastructures capable of hosting high and very high capacity networks.
- **Buildings:** The TA governs shared infrastructures inside buildings and building units, which will be further regulated through a royal decree.

End-user rights

- **Extension of rights:** The TA broadens the scope of the rights granted to ECS end-users and consumers (which must be fulfilled by all operators providing publicly available ECS, with certain exceptions). Under the TA, operators have a two-month period for adapting to the new provisions any contracts to be concluded with their customers, and a four-month period for adapting any contracts that have already been signed.
- **Right not to receive marketing calls:** End-users of number-based ICS will have the right not to receive unsolicited marketing calls.
- **Contents of contracts:** Before concluding contracts or offers, operators (other than those providing transmission services used for machine-to-machine services) must provide consumers with (i) a short and easily understandable summary of the contract specifying its main elements; and (ii) information on the best tariffs at least yearly.
- **Duration of contracts:** Consumer contracts will have a maximum term of two years (with certain exceptions). After this term has elapsed, end-users may terminate the contract by giving one month's notice at no extra cost.



- **Provider switching:** End-users will have the right to switch providers of number-dependent ECS and internet access services, ensuring (i) internet access service continuity, unless it is technically impossible; and (ii) that any temporary loss of service during the switching process does not exceed one business day.
- **Number portability:** End-users who terminate their contract and request number portability must be able to keep their number and have the service activated with the new operator within one business day.
- **Bundled contracts:** Under the TA, bundled contracts offer various services, including internet access and number-based ICS. Consumers will have the right to terminate a bundled contract in full if there are grounds for terminating any of its parts, and the TA precludes contract extensions beyond the original term if another bundled service is added unless the consumer requests it.
- **Consumer rights extended to microenterprises:** The TA grants certain consumer rights to microenterprises, small enterprises and non-profit organizations, including the rights to clear, easy and transparent contract terms and conditions, to the minimum content of ECS contracts and offers, to a contract's maximum term of two years and most rights related to bundled contracts.
- **Right to call the emergency services free of charge:** The TA extends this right to all users of number-based ICS.
- **Open internet access:** The TA provides the right to open internet access, meaning that operators must handle the traffic in an equal, non-discriminatory manner, without restrictions or interferences (although traffic management measures are allowed under certain circumstances).

Telecommunications equipment

- **Essential requirements, conformity and market surveillance:** According to the TA, a royal decree will establish the essential requirements applicable to telecommunications equipment, their conformity assessments, import requirements, the requirements to place them on the market and put them into service, and the market surveillance procedure.
- **Installation or maintenance services:** The provision of installation or maintenance services for third parties regarding telecommunications equipment or systems will be under



conditions of free competition, with no limitations other than those imposed in the TA and its implementing regulations, and service providers must submit an affidavit to the Register of Telecommunication Installation Companies stating that they will fulfill the applicable requirements.

Public airwaves or radioelectric public domain

- **Shared use:** The shared use of the public airwaves does not require any license, permit or authorization, but operators must inform the State Secretariat for Telecommunications of their networks' frequency bands, area description, each network's identifiers and the number of transmitters for each network.
- **Licenses, permits or authorizations required for granting rights of use:** (i) A general authorization if there is a special use of frequency bands made available through public electronic communications networks provided by operators of electronic communications; (ii) an individual license if there is a reserved right of special use with no economic content if so established in its specific regulation, or for self-provision by the applicant; and, (iii) in all other cases, an administrative concession will be required, under the prerequisite that applicants must qualify as operators of electronic communications and cannot have been banned from entering into public procurement contracts under the [Spanish Public Procurement Act](#).
- **Licenses, permits or authorizations awarded through public tenders:** The TA allows the Ministry to (i) reduce the granting of concessions to use the public airwaves for a specific frequency; and (ii) award them through a public tender, which must be terminated within eight months from the call.
- **Shared use:** Operators may be subject to obligations related to sharing passive infrastructure, or obligations to conclude localized roaming access agreements if directly necessary for the local provision of services and provided that no feasible and similar alternative means of access are available.
- **Technology and service neutrality:** Any type of technology or service may be used in the radio frequency bands declared available for ECS in the National Frequency Allocation Table. However, reasonable and non-discriminatory restrictions on the types of technology may be imposed if necessary, e.g., for security reasons, to prevent interferences, to ensure an efficient use or for securing general interest objectives.



- **Concession periods:** The TA extends, with certain limits, the minimum and maximum concession periods regarding the private use of the public airwaves. These concessions will be for a minimum term of 20 years and a maximum of 40 years after all possible extensions.
- **The secondary market in the public airwaves:** The TA allows for the transfer of the licenses, permits or authorizations, and for the assignment, use or pooling, wholly or partially, of rights of use of the public airwaves under the authorization conditions provided in a royal decree.

Fees

- **Scope of application:** The TA reduces the scope of application of the general operators fee: only operators with a gross income exceeding €1 million will be subject to this fee.
- **Reporting of income:** Operators must report their annual gross income before June 30 of the following year. The TA is in line with the principle that tax matters can only be governed by statutory provisions (note that under the previous regulation, this matter was governed by a royal decree, i.e., a regulatory provision, and was thus repealed).

Fines and liability

- **Fines:** The TA maintains the same fines as [Act 9/2014](#) for very serious and serious infringements, but it provides for more stringent fines in case of minor infringements, which used to carry a €50,000 fine and will now carry a €100,000 fine.
- **Directors' liability:** As well as the corresponding fine, authorities may impose penalties on legal entities' legal representatives or members of the governing body that participated in the agreement or decision.

Entry into force

- The new TA will come into force on June 30, 2022, except for the right of end-users not to receive unsolicited marketing calls, which will come into force on June 29, 2023.



For additional information, please contact our [Knowledge and Innovation Group](#) lawyers or your regular contact person at Cuatrecasas.

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