

I. GENERAL PROVISIONS

HEAD OF STATE

4950 *Law 9/2014 of 9 May on Telecommunications.*

JUAN CARLOS I

KING OF SPAIN,

Know all men by these presents
: that the Parliament has passed and we are come to give our assent to this law:

PREAMBLE

I

Law 32/2003 of 3 November, the General Telecommunications Act, transposed into the Spanish legal system the regulatory framework for electronic communications adopted by the European Union in 2002, detailing the principles of free competition and minimum administrative intervention enshrined in the previous regulations.

Since its adoption, Law 32/2003 of 3 November has been the object of a variety of amendments designed to ensure the emergence and viability of new operators, the protection of user rights and the administrative supervision of the aspects related to public service, the public domain and the defence of competition.

The latest of these amendments, in Royal Decree-Law 13/2012 of 30 March, transposing the directives on the internal electricity and gas markets and on electronic communications, and adopting measures to remedy deviations due to mismatches between the costs and revenues of the electricity and gas industries, incorporated the new European regulatory framework for electronic communications of 2009 into the Spanish legal system.

This new European framework comprises Directive 2009/136/EC of the European Parliament and of the Council, of 25 November 2009 (Users' Rights), and Directive 2009/140/EC of the European Parliament and of the Council, of 25 November 2009 (Better Regulation), and based on this framework introduces into the Law measures designed to create a suitable framework for investing in the deployment of new generation networks, so as to permit the operators to offer innovative services technologically more suited to the needs of the public.

II

Telecommunications constitute one of the most dynamic sectors in the economy and one of those that can contribute most to growth, productivity, employment and, therefore, to economic development and social welfare, directly affecting the circle of protection around general interests.

Currently, technological advances are moving us into a new stage – the expansion of new generation networks – which obliges the public powers to reflect on the importance of the regulatory function.

The economic and financial situation that is affecting most developed countries and the current need to promote investment and foster competition are essential elements to be considered when reviewing the regulatory framework.

The telecommunications sector, which is subject to a process of ongoing technological innovation, needs constant, huge investment. It requires large-scale projects to be undertaken, and these can be affected if they have to be carried out under different conditions as regards the

deployment of networks and the marketing of services in the different regions of the country.

The aim of the Digital Agenda for Europe, the main instrument for meeting the objectives of the Europe 2020 strategy, is that in 2020 all Europeans will have the possibility of having broadband connections with a minimum speed of 30 Mbps, and that at least 50% of European homes will subscribe to broadband connections of over 100 Mbps. These objectives have been included in the Spanish digital agenda adopted by the government in February 2013.

According to European Commission estimates, between €180 billion and €270 billion will need to be invested up to that date in order to achieve this. It is calculated that Spain will need private sector investments of €23 billion.

These investments may have a considerable economic and social impact. The European Commission estimates that for every 10% increase in broadband penetration the economy (GDP) grows by between 1% and 1.5%. For its part, the OECD considers that a 10% increase in broadband penetration in any one year leads to a 1.5% increase in productivity during the following five years.

As the European Commission has also noted, the deployment of ultra-fast networks can have a significant impact on job creation. It estimates that innovation could generate two million jobs by 2020, including jobs in related sectors, such as content provision and equipment manufacture.

Apart from this, as well as stimulating investment, it is necessary to continue to promote and oversee effective competition in the telecommunications sector. In this regard it must be borne in mind that the continuing process of technological innovation found in this sector requires substantial investments in network or infrastructure deployment and in the marketing of services, which also create barriers to entry into the sector, thereby making competition difficult. This Law seeks to further competition without discouraging investment.

Consequently, it introduces structural reforms into the legal system for telecommunications that are designed to facilitate the deployment of networks and the provision of services by operators so that they can offer users more innovative, higher quality services and greater coverage, at more competitive prices and with better conditions, which will contribute to furthering the competitiveness and productivity of the Spanish economy as a whole. It also favours legal certainty, since it condenses the current legislation, especially the Community framework for electronic communications.

However, at the same time, since the existence of effective competition is an effective mechanism for exerting pressure on prices and on the quality of the services and innovation, the Law includes a set of obligations or measures that may be imposed *ex ante* on the operators with significant market power. Nevertheless, the *ex-post* work of Spain's National Authority on Markets and Competition will be equally decisive in prosecuting competition-restricting practices, including both collusive behaviour and the abuse of a dominant position, which could affect this sector. It is therefore essential that the Authority carries out continuing oversight of the different electronic communications markets, in order to ensure, preserve and promote effective competition in them that will ultimately benefit users.

III

This Law therefore seeks to ensure the fulfilment of the objectives of the Digital Agenda for Europe, which in the current situation of technological advances and economic uncertainty, requires the establishment of a clear, stable regulatory framework that will foster investment, provide legal certainty and eliminate the barriers that have hindered network deployment, and bring about a greater degree of market competition.

To this end, based on the exclusive state powers over telecommunications under Article 149.1.21. of the Constitution and the transversal powers in Articles 149.1.1. and 149.1.13. of the same text, this Law seeks, as one of its main objectives, to restore market unity in the telecommunications sector by setting up coordination and conflict resolution procedures between state legislation of the sector and the legislation of the competent Administrations, issued in exercise

of their powers, that may affect network deployment and the service provision

With the same objective of furthering the deployment of networks and the provision of electronic communications services, an administrative simplification has been made by eliminating telecommunications licences and government permits for certain categories of installations that make use of the spectrum. Similarly, a review of the licences or permits issued by the competent Administrations is planned, to eliminate their being required for certain installations on private property or for the technological renewal of the networks and the deployment of new networks that permit access to the infrastructures of other economic sectors capable of being used for the deployment of electronic communications networks.

Similarly, to reduce administrative burdens, the Law simplifies the operators' reporting obligations. They may only be requested to supply information that is not already in the possession of the National Regulation Authorities.

Also, strict conditions are set for the existence of operators controlled directly or indirectly by public administrations, so that, apart from the concept of self-provision, the provision of services under market conditions and with private investor criteria is ensured, in order to prevent the occurrence of distortions of competition and to rationalise public spending.

The Law also incorporates the provisions contained in Law 3/2013 of 4 June on the creation of the National Authority for Markets and Competition, which gives this Authority in all cases the powers of ex-ante regulation and resolution of conflicts between operators recognised under Community regulations.

Finally, as a necessary counterpoint to the reduction of the burdens and obligations imposed on the operators, the Law strengthens the control of the public airwaves and the powers of inspection and sanction, by facilitating the adoption of precautionary measures and revising the amounts of the penalties.

In short, the principles of liberalising the sector, free competition, restoring the single market and lessening burdens that inspire this legal text aim to bring legal certainty to the operators and create the necessary conditions for the existence of effective competition, for investment in the deployment of new generation networks and for the provision of new services, so that the sector can contribute to the economic growth needed by the country.

IV

The Law consists of eighty-four Articles grouped under four titles, nineteen additional provisions, twelve transitional provisions, one repeal provision, eleven final provisions and two appendices.

Title I, "General Provisions" lays down, among other matters, the purpose of the Law, which is not limited to regulating "electronic communications", a term which, in accordance with Community directives, includes aspects such as the qualifications for being an operator, the rights and obligations of operators and users, and the universal service, but includes the entire "telecommunications" regime referred to in Article 149.1.21 of the Spanish Constitution.

This Law therefore also regulates other questions such as the installation of equipment and systems, the legal interception of telecommunications, data storage, and the assessment of the compliance of equipment and apparatus, topics that are the object of specific legislation at the Community level.

The Law expressly excludes from regulation the content broadcast over audiovisual communication services, which form part of the social communications media system and are characterised by being transmitted simultaneously in one direction to many users. However, the networks used for sound and television broadcasting services and the resources associated with them are an integral part of the electronic communications regulated in this Law.

It also excludes from its regulation the provision of telecommunications network services that do not mainly consist of conveying signals over said networks. These latter are the object of regulation in Law 34/2002 of 11 July on services to the information society and electronic commerce.

Under this Title, the objectives and principles of the Law, already contained in the previous

regulation, are also reorganised, with an emphasis on reaching a balance between fostering innovation, deploying new networks, providing new services and ensuring effective competition in the telecommunications markets.

Title II of the Law, on the general network operation and service provision regime, reflects the full liberalisation of the sector.

In accordance with the principles of necessity and proportionality, authorisation to provide and operate networks is granted generally and immediately by the Law with the sole requirement of notifying the Register of Operators, which now becomes part of the Ministry of Industry, Energy and Tourism.

Cases of self-provision must also be the object of notification by operators directly or indirectly controlled by public administrations. The Law sets specific limits to the installation and operation of networks and the provision of services by the public administrations, to prevent distortions of competition that could result from the participation of public operators in the electronic communications market.

In accordance with the European Union Directives, the Law refers to the functions of the National Authority on Markets and Competition. In its capacity as the independent national regulation authority, it will exercise in all cases the powers related to the imposition of ex-ante regulation within the framework of market analysis processes, the resolution of conflicts between operators and the possible imposition of the obligation of functional separation, regulating the obligations applicable to the operators with significant power in the reference markets.

Certain provisions have also been included in Title II of this Law with the aim of ensuring that the electronic communications markets develop in an environment of effective competition. It is therefore necessary to ensure that the market analysis processes for imposing, where appropriate, specific obligations within the framework of ex-ante regulation are carried out with due regularity. Similarly, with the aim of suppressing competition-restricting practices, the National Authority on Markets and Competition will oversee the operation of the different electronic communications markets and the different operators whose activities are carried out in these markets.

Title II of the Law, on the obligations and rights of operators and users, includes the precepts regarding the universal service, the obligations of network integrity and security and the extent of end user rights, and includes significant new items related to the operators' rights to occupy the public and private domain, to deploy networks and to access the infrastructure of other sectors.

In the area of administrative simplification, it is necessary to remember that in Law 12/2012 of 26 December, on urgent measures to deregulate commerce and certain services, certain permits for the deployment of certain private domain telecommunications networks were replaced by a formal statement.

In this Law, it is laid down that for other private domain network deployment activities permits may similarly be replaced by a formal statement in those cases where the operator had previously submitted a deployment plan to the competent administrations and the plan had been approved, since, in these cases, the competent administration had already analysed and weighed the interests inherent in the exercise of its own powers. Actions that simply involve technological updates, without affecting civil engineering works or masts, do not require approval.

With the aim of ensuring the single market and of facilitating the installation and deployment of networks and the provision of new services, the Law includes the mechanisms needed for cooperation and conflict resolution. Land and city planning instruments created by the competent public administrations that may affect network deployment will be the object of a report by the Ministry of Industry, Energy and Tourism, so as to foresee when it is necessary for there to be negotiations between the Ministry of Industry, Energy and Tourism and the bodies charged with approving, modifying or reviewing said planning instruments.

Finally, the Law considers the necessary provision of electronic communications infrastructure in urban areas and guarantees the right of access of operators to the infrastructure of local

administrations and to linear infrastructure such as electricity, gas, water, drains and transport. These measures are in line with the proposals made by the European Commission in its document of 27 April 2012 regarding measures to reduce the cost of deploying very high speed networks in Europe.

With the aim of strengthening users' rights, the rights introduced into Law 32/2003 of 3 November, the General Telecommunications Act, by Royal Decree-Law 13/2012 of 30 March, are clarified. The improvement in the identification of telecommunications users' rights in regard to the protection of personal details and individual privacy is notable, as is the maintenance of the extra-judicial process for resolving disputes between operators and end-users before the Ministry of Industry, Energy and Tourism. It is also planned that the special sectoral legislation provided for in this Law will prevail over the general legislation in defence of consumers and users, as stated in Community regulations, especially in Article 3, section 2 of Directive 2011/83/EU of 25 October 2011 on consumer rights.

Title IV, on the evaluation of the compliance of equipment and apparatus, regulates aspects such as technical standardisation, the evaluation of the compliance of equipment and apparatus and the conditions that installations must fulfil, among other considerations.

In regard to the administration of the public airwaves, Title V clarifies the applicable principles, the actions to be taken by said administration, the types of use and the difference licences, introduces simplified administration of access to certain frequency bands, and consolidates the latest reforms in the areas of duration, alteration, expiry and revocation of licences and the secondary spectrum market. As a new feature, measures are introduced aimed at preventing the use of the spectrum by those who do not have a licence to do so, thereby guaranteeing the availability and efficient use of this scarce resource, in particular through its active protection and the cooperation of the network operators.

Title VI, "The administration of telecommunications" defines the powers granted to the different National Regulatory Authorities. Specifically, this title includes the power sharing inspired by Law 3/2013 of 4 June on the creation of the National Authority on Markets and Competition, assigning this Authority duties such as the definition and analysis of the electronic communications network and service reference markets, the identification of the operator or operators with significant market power, the establishment, where appropriate, of specific obligations for these operators, the resolution of conflicts in the electronic communication markets and the determination of the net cost of providing the universal service, among other duties.

In Title VII, "telecommunications taxes" and Appendix I, the Law introduces important improvements in the regulations contained in Law 32/2003, of 3 November, on telecommunication taxes. In particular, it reduces the maximum limit of the general tax on operators aimed at financing the costs incurred by the National Regulation Authorities due to the application of the legal system set up in this Law and it sets up an automatic adjustment scheme for the costs that the National Regulatory Authorities have had to bear.

Title VIII, on the inspection and penalty system, strengthens the powers of inspection by requiring that the owners of plots or buildings where telecommunications installations are located identify the owners of these installations, improves the classification of contraventions, revises the classification and amounts of the penalties, and facilitates the adoption of precautionary measures that may be taken even before disciplinary proceedings are initiated.

The additional provisions regulate, among other considerations, the Telecommunications and Information Society Advisory Board, the obligations regarding conditional access, access to certain radio and television broadcasting services, wide-screen television and transmission obligations, such as the creation of an Inter-Ministerial Commission on radio frequencies and health responsible for reporting on the measures adopted regarding health protection from radio-frequency emissions and the many controls to which installations producing these emissions are subject.

In particular, one of the additional provisions seeks to make ultra-fast broadband available to all. Based on this, the Government will set up a National Ultra-Fast Network Strategy aimed at promoting the deployment of ultra-fast broadband access networks, both fixed and mobile, in order to make

them available to all, and to promote their adoption by the public, companies and administrations, so as to ensure social and territorial cohesion in cooperation with the regional administrations.

To implement this Strategy, measures may be included such as annual public calls for applications for aid for the expansion of ultra-fast broadband coverage that, under the principle of technological neutrality, will provide coverage to areas in which there is no provision and in which none is planned in the short term, with the particular aim of shortening connection times and lowering costs in rural areas where there is difficult terrain and a low population density. These public calls for applications will ensure that the aid will cover only a percentage of the investment, that the aid will be granted by competitive tender and that the need for the aid will be justified by the existence of a short- or medium-term shortfall that prevents the implementation of the project due to its low profitability and includes mechanisms to prevent possible over-compensation.

Preferential action areas will also be set up based on the users' greatest needs, their dynamism, the presence of SMEs or centres of economic activity such as industrial estates or tourist centres, and other factors such as regional balance, their impact on economic development, their isolation or the availability of funding from the European Regional Development Fund (ERDF).

This Strategy will be supplemented by other measures in this Law aimed at facilitating the deployment of ultra-fast fixed and mobile networks and network modernisation and renovation.

The transitional provisions regulate different aspects to facilitate the transition to the application of this new Law, such as the adaptation of the operators that are directly or indirectly controlled by public administrations to the system provided for in Article 9 or the transitional system for setting taxes in Appendix I.

Lastly, in the final provisions, the Law amends the text of various regulations. In particular, various provisions of Law 34/2002 of 11 July on the Information Society and Electronic Commerce Services, are amended to bring them into line with the current social and economic framework. Specifically, details have been added on the recipients' consent to accepting the processing of information from data storage and retrieval devices on their terminal equipment and criteria are set for the modulation of penalties.

TABLE OF CONTENTS

Title I.	General provisions
Article 1.	Purpose and scope of application of the Law
Article 2.	Telecommunications as services of general interest. Article 3. Objectives and principles of the Law.
Article 4.	Telecommunications services for national defence, public safety, road safety and civil defence.
Title II.	Operation of networks and provision of electronic communication services under a system of free competition.
Chapter I.	General provisions.
Article 5.	Applicable principles.
Article 6.	Requirements for the operation of networks and the provision of electronic communications services.
Article 7.	Register of operators.
Article 8.	Conditions for the provision of services or the operation of electronic communications networks.
Article 9.	Installation and operation of public networks and provision of electronic communications services by the public administrations under the third-party provision system.
Article 10.	Obligations to provide information.

- Article 11. Technical regulations.
- Chapter II. Access to networks and associated resources and interconnection.
- Article 12. General principles applicable to access to networks and associated resources and their interconnection.
- Chapter III. Ex-ante market regulation and conflict resolution.
- Article 13. Reference markets and operators with significant market power.
- Article 14. Specific obligations applicable to operators with significant power in reference markets.
- Article 15. Conflict resolution.
- Chapter IV. Separation of functions.
- Article 16. Mandatory separation of functions.
- Article 17. Voluntary separation of functions.
- Article 18. Specific obligations in addition to separation of functions.
- Chapter V. Numbering, routing and naming.
- Article 19. General principles.
- Article 20. National plans
- Article 21. Retention of telephone numbers by subscribers.
- Article 22. Harmonised European numbers for services of social value.
- Title III. Public service obligations and rights and obligations of a public nature for the operation of networks and the provision of electronic communication services.
- Chapter I. Public service obligations.
- Section 1. Delimitation.
- Article 23. Delimitation of public service obligations. Article 24. Categories of public service obligations.
- Section 2. The universal service.
- Article 25. Concept and scope of application
- Article 26. Appointment of operators responsible for providing the universal service.
- Article 27. Cost and funding of the universal service.
- Section 3. Other public service obligations.
- Article 28. Other public service obligations.
- Chapter II. The operators' rights and the deployment of public electronic communications networks.
- Section 1. The operators' rights to occupy the public domain, to be beneficiaries of the compulsory expropriation procedure and to have easements and limitations on property established in their favour.
- Article 29. Right to occupy private property. Article 30. Right to occupy the public domain.
- Article 31. Regulations applicable to the occupation of the public domain and private property.
- Article 32. Shared location and shared use of public or private property.
- Article 33. Other easements and limitations on property.
- Section 2. Public administration regulations that affect the deployment of public electronic communications networks.

Article 34. Cooperation among the public administrations in the deployment of public electronic communications networks.

Article 35. Mechanisms for cooperation between the Ministry of Industry, Energy and Tourism and the public administrations for the deployment of public electronic communications networks.

Article 36. Provision of electronic communications infrastructure in urban planning projects and civil engineering work funded with public resources.

Section 3. Access to infrastructure capable of housing public electronic communications networks.

Article 37. Access to infrastructure capable of housing public electronic communications networks.

Article 38. Access to or use of electronic communications networks owned by bodies or entities managing state transport infrastructure.

Chapter III. Communications privacy and the protection of personal information and public obligations related to electronic communications networks and services.

Article 39. Communications privacy.

Article 40. Interception of electronic communications by the technical services

Article 41. Protection of personal information.

Article 42. Storage and transfer of electronic communications data and public communications networks.

Article 43. Encryption in electronic communications networks and services.

Article 44. Integrity and security of electronic communications networks and services.

Chapter IV. Common infrastructure and electronic communications networks in buildings.

Article 45. Common infrastructure and electronic communications networks in buildings.

Chapter V. Rights of end-users

Article 46. Rights of end-users of electronic communications services.

Article 47. Specific rights of end-users of publicly available electronic communications networks and services.

Article 48. Right to the protection of personal information and privacy in regard to unsolicited communications, traffic and location data and directories.

Article 49. Subscriber directories.

Article 50. Quality of service.

Article 51. Access to numbers and services.

Article 52. Regulation of the basic conditions of access by disabled persons.

Article 53. Contracts.

Article 54. Transparency and publication of information. Article 55. Dispute resolution.

Title IV. Evaluation of the compliance of equipment and apparatus

Article 56. Technical standardisation.

Article 57. Evaluation of compliance.

Article 58. Mutual recognition.

Article 59. Conditions to be met by installations and installers.

Title V. The public airwaves

Article 60. On the administration of the public airwaves

Article 61. Government powers for the administration of the public airwaves.

Article 62. Licences for the use of the public airwaves.

Article 63. Licences granted through a tendering process.

Article 64. Duration, modification, expiry and revocation of licences for use of the public airwaves.

Article 65. Active protection of the public airwaves

- Article 66. Technological and service neutrality in the use of the public airwaves.
 Article 67. Secondary market in the public airwaves.
- Title VI. The administration of telecommunications.
- Article 68. Powers of the General State Administration and its public agencies.
 Article 69. Ministry of Industry, Energy and Tourism.
 Article 70. The National Authority on Markets and Competition.
- Title VII. Telecommunications taxes.
- Article 71. Telecommunications taxes.
- Title VIII. Inspection and penalty scheme.
- Article 72. Inspection duties
 Article 73. Powers of inspection.
 Article 74. Liability for telecommunications-related contraventions.
 Article 75. Classification of contraventions.
 Article 76. Very serious contraventions.
 Article 77. Serious contraventions.
 Article 78. Minor contraventions.
 Article 79. Sanctions.
 Article 80. Criteria for determining the amount of the sanction.
 Article 81. Measures prior to disciplinary proceedings.
 Article 82. Precautionary measures in the disciplinary proceedings.
 Article 83. Limitation.
 Article 84. Sanctioning powers.
- First additional provision. Meaning of the terms used in this Law.
 Second additional provision. Limitations and easements.
 Third additional provision. Application of legislation regulating the common infrastructure of buildings.
 Fourth additional provision. Confidential information.
 Fifth additional provision. The Telecommunications and Information Society Advisory Board.
 Sixth additional provision. Coercive fines.
 Seventh additional provision. Obligations for conditional access, access to certain radio and television broadcasting services, wide-screen television and transmission obligations
 Eighth additional provision. Notification mechanism.
 Ninth additional provision. Report on the obligations to be imposed on operators of public networks or publicly available electronic communications services.
 Tenth additional provision. Creation of the Inter-Ministerial Commission on radio frequencies and health.
 Eleventh additional provision. Essential technical parameters and requirements for ensuring the operation of the various electronic communications networks and services.
 Twelfth additional provision. Application of the General Tax Act.
 Thirteenth additional provision. Publication of actions.
 Fourteenth additional provision. Coordination of public aid to broadband and economic development and digital employment and new digital services.
 Fifteenth additional provision. Allocation of resources to the General State Administration and incorporation of personnel from the National Authority on Markets and Competition.
 Sixteenth additional provision. The public business entity Red.es.
 Seventeenth additional provision. Innovation in the area of information and communication

technologies.

Eighteenth additional provision.	Making ultra-fast broadband universally available.
Nineteenth additional provision.	Amateur radio stations.
First transitional provision.	Regulation prior to the entry into effect of this Law.
Second transitional provision.	Adaptation of operators directly or indirectly controlled by public administrations to the system provided for in Article 9.
Third transitional provision.	Conditions tied to concessions for the use of the public airwaves.
Fourth transitional provision.	Restrictions on the principles of technological neutrality and services in licences for the use of the radio spectrum for providing electronic communications services.
Fifth transitional provision.	Provision of certain services referred to in Article 28.
Sixth transitional provision.	Transitional scheme for setting the taxes established in Appendix I of this Law.
Seventh transitional provision.	Applications for administrative permits or licences made in advance.
Eighth transitional provision.	Register of operators.
Ninth transitional provision.	Adaptation of land planning and city planning regulations and instruments drawn up by the competent public administrations that affect the deployment of public electronic communications networks.
Tenth transitional provision.	Transitional performance of functions by the National Authority on Markets and Competition.
Eleventh transitional provision.	Proceedings initiated prior to the entry into effect of this Law.
Twelfth transitional provision.	Transitional scheme for radio stations and infrastructure for the provision of publicly available electronic communications services for the installation of which an application for a licence or permit has been submitted.
Sole repealing provision.	Repeal of legislation.
First final provision.	Amendment to Law 13/2011 of 27 May on the regulation of gaming.
Second final provision.	Amendment to Law 34/2002 of 11 July on services to the information society and electronic commerce.
Third final provision.	Amendment to Law 38/1999 of 5 November on the regulation of building construction.
Fourth final provision.	Amendment to Law 25/2007 of 18 October on the storage of data relating to electronic communications and public communications networks.
Fifth final provision.	Amendment to Royal Decree-Law 1/1998 of 27 February on common infrastructure in buildings for access to telecommunication services.
Sixth final provision.	Amendment to Law 59/2003 of 19 December on electronic signatures.
Seventh final provision.	Amendment to Law 7/2010 of 31 March, the General Audiovisual Communications Act.
Eighth final provision.	Regulation of the conditions on which bodies or entities managing state transport infrastructure will allow the occupation of the public domain that they manage and the private property that they own.
Ninth final provision.	Constitutional basis Tenth final provision. Powers of development.
Eleventh final provision.	Entry into effect.

Appendix I. Telecommunications taxes.

1. General operator tax.
2. Numbering, routing and naming taxes.
3. Radio spectrum reservation tax.

4. Telecommunications taxes.
5. Management and collection of taxes during the voluntary period.

Appendix II. Definitions.

TITLE I

General Provisions

Article 1. *Purpose and scope of application of the Law*

1. The scope of application of this Law is the regulation of telecommunications, which include the operation of networks and the provision of electronic communications services and associated resources, in accordance with Article 149.1.21. of the Constitution.

2. Excluded from the scope of this Law are audiovisual communication services, audiovisual content transmitted over networks, as well as the basic scheme for audiovisual social communications media referred to in Article 149.1.27. of the Constitution.

Also excluded from the scope of this Law are services that supply content transmitted over electronic communications networks and services, activities that consist of the exercise of editorial control over said content and Information Society services, regulated in Law 34/2002 of 11 July on Information Society and Electronic Commerce Services, which do not consist wholly or mainly in the conveyance of signals over electronic communications networks.

Article 2. *Telecommunications as services of general interest.*

1. Telecommunications are services of general interest provided under a system of free competition.

2. Only services regulated in Article 4 and Title III of this Law shall be considered a public service or be subject to public service obligations.

The imposition of public service obligations will seek to attain the objectives laid down in Article 3 of this Law and may affect operators who obtain rights to occupy the public domain or private property, rights to use the public airwaves, rights to use public numbering, routing or naming resources or that have the status of operators with significant market power in a particular reference market.

Article 3. *Objectives and principles of the Law.*

The Objectives and principles of this Law are as follows:

a) To promote effective competition in the telecommunications markets in order to maximise the benefits to companies and consumers, mainly in terms of lower prices, service quality and innovation, while duly taking into account the variety of conditions in regard to competition and consumers that exist in the different geographical areas, and ensuring that there is no distortion or restriction of competition in the operation of networks or the provision of electronic communications services, including the transmission of content.

b) To develop the economy and digital employment, to foster the development of the telecommunications sector and of all the new digital services made possible by the new ultra-fast networks, promoting social and territorial cohesion by improving and expanding networks, providing electronic communications services and supplying the resources associated with these networks.

c) To promote the deployment of networks and the provision of electronic communications services, fostering end-to-end connectivity and interoperability and access, on conditions of equality and non-discrimination.

d) To foster the development of the telecommunications product and equipment industry.

e) To contribute to the development of the European Union's internal electronic communications services market.

f) To promote efficient investment in infrastructure, including, when appropriate, infrastructure-based competition, by fostering innovation and duly taking into account the risks incurred by investor companies.

g) To make possible the efficient use of the limited telecommunications resources, such as numbering and the radio frequency spectrum, and to properly protect the latter, and access to public and private property occupation rights.

h) To foster, as far as possible, technological neutrality in the regulations.

i) To ensure compliance with public service obligations in the operation of networks and the provision of electronic communications services referred to in Title III, especially those relating to universal service.

j) To defend user interests by safeguarding their right to access electronic communications services in suitable conditions of choice, price and good quality, promoting the ability of end-users to access and distribute information or use the applications and services of their choice, especially through open access to the Internet. In the provision of these services, the constitutional imperatives of non-discrimination, respect for the rights of reputation and privacy, the protection of young people and children, the protection of personal information and communications privacy must be safeguarded.

k) To ensure that the telecommunications markets safeguard and protect the satisfaction of the needs of specific social groups, disabled persons, the elderly, people in a situation of dependency and users with special social needs, by paying attention to the principles of equal opportunities and non-discrimination. In regard to access to electronic communications services by people in a situation of dependency, compliance with the relevant regulations or specifications regarding technical standardisation published pursuant to Community regulations will be promoted.

l) To facilitate access by disabled users to electronic communications equipment and the use of terminals.

Article 4. Telecommunications services for national defence, public safety, road safety and civil defence.

1. Only the services regulated in this Article are considered to be public services.

2. The telecommunications networks, services, installations and equipment that perform activities essential to national defence [or] form part of the resources allocated for this purpose are reserved to the State and are governed by their own specific legislation.

3. The Ministry of Industry, Energy and Tourism is the body in the General State Administration with the powers, pursuant to the specific legislation on the matter and as established in this Law, to carry out, insofar as it is affected, national defence policy in the telecommunications sector, with due coordination with the Ministry of Defence and following the criteria established by the latter.

Within the framework of civil defence-related functions, the Ministry of Industry, Energy and Tourism is responsible for studying, scheduling, proposing and implementing any measures related to its contribution to national defence in the area of telecommunications.

For this purpose, the Ministries of Defence and of Industry, Energy and Tourism shall coordinate the planning of the Armed Forces telecommunications system so as to ensure as far as possible its compatibility with the civilian services. They shall also draw up the necessary technological coordination programmes to facilitate the harmonisation, standardisation and use, joint or several, of civilian and military resources, systems and networks in the area of telecommunications. Such inter-ministerial bodies as may be considered appropriate shall be set up to study and report on these matters, their composition and powers to be laid down by Royal Decree.

4. In the areas of public safety, road safety and civil defence, insofar as they relate specifically to the use of telecommunications, the Ministry of Industry, Energy and Tourism shall cooperate with the Ministry of the Interior and the Autonomous Community (regional) bodies with competence in said matters.

5. The movable and fixed assets associated with the centres, establishments and offices used for the operation of networks and the provision of telecommunications services shall be equipped with such security, surveillance, information dissemination, risk prevention and protection measures and systems as may be determined by the Government, at the proposal of the Ministries of Defence,

Interior or Industry, Energy and Tourism, within the scope of their respective powers. These measures and systems must be available in normal circumstances and in crises, as well as in the cases provided for in Organic Law 4/1981 of 1 June regulating States of Alarm, Exception and Siege, and in Law 2/1985 of 21 January on Civil Defence.

6. The Government may, in exceptional cases and on a temporary basis, rule that the General State Administration shall assume the direct management of certain services or the operation of certain electronic communications networks, pursuant to the revised text of the Public Sector Contracts Act, approved by Royal Legislative Decree 3/2011 of 14 November, to guarantee public safety and national defence. In the event of non-compliance with the public service obligations referred to in Title III of this Law, the Government may also, with a prior mandatory report from the National Authority on Markets and Competition, and also in exceptional cases and on a temporary basis, rule that the General State Administration shall assume the direct management of the respective services or the operation of the respective networks. In the latter case, it may, on the same conditions, take over the provision of electronic communications services.

The decisions referred to in the previous paragraph, to assume the direct management of the service, to take the service over, or to take over or operate the networks shall be adopted by the Government on its own initiative or at the instance of a competent public administration. In the latter case, it shall be necessary for the public administration to have powers in the area of security or the provision of the public services affected by the abnormal operation of the service or the electronic communications network. In the event that proceedings are initiated at the instance of an administration other than the State administration, the former shall be considered an interested party and may issue a report prior to the final decision.

7. The Regulations contained in this Law are understood to be without prejudice to the provisions in the specific legislation on public safety- and national defence-related telecommunications.

TITLE II

Operation of networks and provision of electronic communications services under a system of free competition

CHAPTER I

General Provisions

Article 5. *Applicable principles.*

1. The operation of networks and the provision of electronic communications services shall be carried out under a system of free competition with no other limitations than those set forth in this Law and its implementing regulations.

2. The acquisition of the rights to use the public airwaves, to occupy the public domain or private property and the numbering, routing and naming resources needed to operate networks and provide electronic communications services must be performed in accordance with the provisions in this Law and, where not provided for herein, in the specific legislation.

3. The measures adopted in regard to end users' access to or use of services and applications over electronic communications networks shall respect the fundamental rights and freedoms, as guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, the general principles of Community law and the Spanish Constitution.

Any such measure concerning end users' access to or use of services and applications over electronic communications networks that is likely to restrict those rights and fundamental freedoms

may be imposed only if it is appropriate, proportionate and necessary in a democratic society, and its application shall be subject to appropriate procedural safeguards pursuant to the regulations mentioned in the preceding paragraph. Said measures may therefore be adopted only with due respect for the principle of the presumption of innocence and the right to privacy, through prior, fair and impartial proceedings that shall include the right of the interested parties to be heard, without prejudice to the appropriate conditions and procedural arrangements being present in duly justified cases of emergency, in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, the right to effective and timely legal protection shall be guaranteed.

Article 6. *Requirements for the operation of networks and the provision of electronic communications services.*

1. Networks may be operated and electronic communications services may be provided to third parties by natural or legal persons from a Member State of the European Union or of another nationality, when, in the second case, this is provided for in the international agreements binding the Kingdom of Spain. For all other natural or legal persons, the Government may authorise exceptions of a general or particular nature to the above-mentioned rule.

2. Those interested in operating a particular network or in providing a particular electronic communications service must, prior to the start of activities, notify the register of operators in the terms to be established by Royal Decree and submit to the conditions laid down for carrying on the activity that they wish to perform.

Without prejudice to the provisions in Article 7 on operators directly or indirectly controlled by public administrations, those operating networks or providing electronic communications services under self-provision schemes are exempt from this obligation.

Article 7. *Register of operators.*

1. A Register of Operators is hereby created, under the authority of the Ministry of Industry, Energy and Tourism. Said Register shall be public and it shall be regulated by Royal Decree. Access to said Register by electronic means shall be assured. In it shall be recorded the details of the natural or legal persons that have notified their intention to operate networks or provide electronic communications services, the conditions for performing these activities and any alterations thereto.

2. When the Register of Operators finds that the notification referred to in section 2 of the preceding Article does not meet the requirements set, it shall issue a reasoned decision within a maximum term of 15 working days, the notification being deemed not to have been made.

3. The public administrations must notify the Register of Operators of every electronic communications network installation or operation project under a self-provision scheme that makes use of the public domain, irrespective of whether said installation or operation is to be carried out directly or through some other entity or company. A Royal Decree may specify those cases in which, due to the characteristics, the size of the planned network or the nature of the services to be provided, it is not necessary to give such notification.

4. Those selected to provide harmonised electronic communications services put out to tender by European Union institutions shall automatically be recorded in the Register of Operators.

5. It shall not be necessary to have the consent of the interested party for the processing of personal details that must be contained in the Register nor for the communication of said details deriving from their public nature.

Article 8. *Conditions for the provision of services or the operation of electronic communications networks.*

1. The operation of networks and provision of electronic communications services shall be subject to the conditions provided for in this Law and its implementing regulations, among which shall be included those concerning the safeguarding of end-users' rights.

2. In accordance with the principles of objectivity and proportionality, the Government may amend the conditions imposed after hearing the interested parties, the Consumers and Users Council and, where appropriate, the associations that best represent the remaining users, and a report from the National Authority on Markets and Competition. The amendment shall be enacted in a Royal Decree, in which justification must be given as to what underpins it and a period set for the adaptation of the operators to said amendment.

3. Public or private entities that, pursuant to current legislation, have special or exclusive rights to provide electronic communications services in another economic sector and operate public networks or provide publicly available electronic communications services must have separate, audited accounts for their electronic communications activities, or set up a separate structure for the activities associated with network operation or electronic communications service provision. Exemption from this obligation may be established in a Royal Decree for entities whose gross annual operating income from networks or electronic communications service-related activities is less than €50 million.

Article 9. Installation and operation of public networks and provision of electronic communications services by the public administrations under the third-party provision system.

1. The installation and operation of public networks or the provision of electronic communications services under the third-party provision system by operators directly or indirectly controlled by public administrations shall be specifically governed by the provisions in this Article.

2. The installation and operation of public networks or the provision of electronic communications services under the third-party provision system by operators directly or indirectly controlled by public administrations shall be performed in compliance with the private investor principle, with due separation of accounts, in accordance with the principles of neutrality, transparency, non-distortion of competition and non-discrimination, and in compliance with the regulations on State aid referred to in Articles 107 and 108 of the Treaty on the Functioning of the European Union.

The conditions on which operators directly or indirectly controlled by public administrations must carry out the installation and operation of public networks or the provision of electronic communications services under the third-party provision system and, in particular, the criteria, conditions and requirements for said operators to act subject to the private investor principle shall be determined in a Royal Decree, with a prior report from the National Authority on Markets and Competition. In particular, in said Royal Decree the cases shall be laid down in which, as an exception to the requirement of action subject to the private investor principle, operators directly or indirectly controlled by public administrations may install and operate public networks and provide electronic communications services under the third-party provision system that do not distort competition or when a market failure is confirmed and there is no private sector competitor interested in deployment due to a lack of or insufficient private investment, by matching the public investment to the principle of necessity with the aim of assuring the necessary regional and social cohesion.

3. A Public Administration may only install and operate public electronic communications networks or provide electronic communications service under the third-party provision system through entities or companies that have in their corporate object or purpose the installation and operation of networks or the provision of electronic communications services.

The installation or operation of public electronic communications networks or the provision of electronic communications services under the third-party provision system by the bodies or entities managing state transport infrastructure shall be performed under the conditions laid down in Article 38 of this Law.

4. The installation and operation of public networks or the provision of electronic communications services under the third-party provision system by operators directly or indirectly controlled by public administrations must take place under the conditions laid down in Article 8 and, in particular, the following conditions:

a) The operators' right of access on neutral, objective, transparent, fair and non-discriminatory conditions to the infrastructure and associated resources used by operators directly or indirectly controlled by public administrations to install and operate electronic communications networks has been directly acknowledged.

b) The operators' right to shared use on neutral, objective, transparent, fair and non-discriminatory conditions of the electronic communications network infrastructure and associated resources installed by operators directly or indirectly controlled by public administrations has been directly acknowledged.

c) If the public administrations that regulate or own the public domain own, in whole or in part, or exercise direct or indirect control over operators of public electronic communications networks or publicly available electronic communications services, they must maintain separate structures for said operators and for the bodies responsible for regulating and managing the usage rights to the corresponding public domain.

Article 10. *Obligations to provide information.*

1. The National Telecommunications Regulation Authorities may, within their scope of action, require from natural or legal persons operating networks or providing electronic communications services, as well as from other agents involved in this market, the information needed to fulfil any of the following purposes:

- a) To satisfy statistical or analytical needs and for the drawing up of industry tracking reports.
- b) To check compliance with the conditions set for providing services or operating electronic communications networks, in particular when the operation of the networks involves radio frequency emissions.
- c) To check that the provision of services or the operation of electronic communications networks by operators directly or indirectly controlled by public administrations complies with the conditions set forth in this Law and its implementing regulations.
- d) To evaluate the source of requests for rights to use public airwaves and numbering rights.
- e) To check the effective and efficient use of frequencies and numbers and compliance with the obligations arising from rights to use the public airwaves, numbering, routing and naming or to occupy the public domain or private property.
- f) To draw up analyses that enable reference markets to be defined, specific conditions to be established for operators with significant market power in those markets and in order to gain an insight into how the future evolution of the networks or services may affect the wholesale services that companies make available to their competitors. Companies with significant power in the wholesale markets may also be required to submit accounting data on the retail markets associated with the above-mentioned wholesale markets.
- g) To check compliance with the specific obligations imposed as part of ex-ante regulation and compliance with the decisions issued to resolve conflicts between operators.
- h) To check compliance with public service obligations and public obligations, and to determine the operators responsible for providing the universal service.
- i) To check compliance with the obligations that prove necessary to assure equivalent access for disabled end-users and to ensure that they benefit from the possibility of choosing companies and services available to the majority of end-users.
- j) To make information or interactive applications available to the public so that they can compare the prices, coverage and quality of the services, in the interest of the users.
- k) To adopt measures designed to facilitate co-location or the shared use of elements of public electronic communications networks and associated resources.
- l) To evaluate the integrity and security of electronic communications networks and services.

- m) To comply with the requirements imposed by the law.
- n) To check compliance with the other obligations arising from this Law.
- o) To plan efficiently the use of any public funds that may be allocated to the deployment of telecommunications infrastructure

This information, except for that referred to in paragraphs d) and o), cannot be required before the start of activities and shall be supplied within the term and in the form established for each requirement, depending on the circumstances of the case. The National Regulation Authorities shall guarantee the confidentiality of the information submitted that could affect the security and integrity of the electronic communications networks and services or trade or industrial secrets.

2. The public administrations may request such information as is necessary for the exercise of their powers.

In exercising their duties, the public administrations must first seek information regarding telecommunications from the National Regulation Authorities, before requesting natural or legal persons operating electronic communications networks or providing electronic communications services to provide it. Only in the event that the National Regulation Authorities do not have the information requested or it cannot be provided as it is confidential for reasons of security or is a trade or industrial secret may the competent bodies of the public administrations request said telecommunications-related information from the natural or legal persons operating electronic communications networks or providing electronic communications services.

3. Requests for information made pursuant to the foregoing sections must be justified and proportionate to the end pursued.

Article 11. *Technical regulations.*

1. The Ministry of Industry, Energy and Tourism shall promote the use of standards or technical specifications identified on the list drawn up by the European Commission as the basis for fostering the harmonisation of the supply of electronic communications networks, electronic communications services and associated resources and services, especially in the areas of access and interconnection.

In particular, It shall ensure the use of such standards or technical specifications as the European Commission may declare mandatorily applicable in accordance with European Union regulations, to the extent needed to guarantee the interoperability of services and to foster users' freedom of choice.

In the absence of said standards or specifications, it shall promote the application of international standards or recommendations approved by the International Telecommunications Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Standards Organisation (ISO) and the International Electrotechnical Commission (IEC).

The methods of drawing up and, where appropriate, adopting the technical specifications applicable to electronic communications networks and services, in particular for the purposes of ensuring compliance with the requirements for network deployment, public service obligations, interoperability and network and service integrity and security, may be set in a Royal Decree.

The procedure for notifying the European Commission of the aforementioned specifications in accordance with European Union regulations shall be set in a Royal Decree.

2. the Authority for Markets and Competition shall also promote and ensure the use of standards or technical specifications in the terms indicated in the foregoing section in the exercise of its duties of ex-ante regulation and the resolution of conflicts between operators.

CHAPTER II

Access to networks and associated resources and interconnection.

Article 12. *General principles applicable to access to networks and associated resources and their interconnection.*

1. This chapter and its implementing regulations shall be applicable to interconnection and access to public electronic communications networks and associated resources, unless the beneficiary of the access is an end-user, in accordance with the definition given to the concepts of access and interconnection in Appendix II to this Law.

2. The operators of public electronic communications networks shall have the right and, when requested by other electronic communications network operators, the obligation to negotiate mutual interconnection for the purpose of providing publicly available electronic communications services, with the aim of thereby ensuring the provision and interoperability of services.

3. There shall be no restrictions preventing operators from negotiating access and interconnection agreements with each other.

4. A natural or legal person authorised to operate networks or provide services in another member state of the European Union that requests access or interconnection in Spain shall not need to carry out the notification referred to in Article 6 of the Law when such person does not operate networks or provide electronic communications services in Spain.

5. Without prejudice to the measures that may be adopted in regard to companies that have a significant market power, pursuant to Article 14 of this Law, the National Authority on Markets and Competition may intervene in the relationships between operators or between operators and other entities that benefit from access and interconnection obligations, at the request of any of the parties involved, or ex officio when this is justified, with the aim of promoting and, where appropriate, ensuring the suitability of the access, interconnection and operability of the services, as well as the achievement of the objectives set forth in Article 3. The decision taken by the National Authority on Markets and Competition shall be binding and it shall be taken within the term indicated in Law 3/2013 on the creation of said Authority..

6. The obligations and conditions that are imposed pursuant to this chapter shall be objective, transparent, proportionate and non-discriminatory.

7. Operators that obtain information from others, prior to, during or following the access or interconnection agreement negotiation process shall use said information exclusively for the purposes for which it was provided to them and shall at all times respect the confidentiality of the information transmitted or stored, especially in regard to third parties, including other departments of the same company, subsidiaries or associates.

CHAPTER III

Ex-ante market regulation and conflict resolution.

Article 13. *Reference markets and operators with significant market power.*

1. the National Authority on Markets and Competition, taking into consideration the European Commission Recommendation on relevant markets, the European Commission guidelines on market analysis and the assessment of significant market power and the pertinent rulings and common positions adopted by the Body of European Regulators for Electronic Communications (BEREC), shall define, with a prior report from the Ministry of Industry, Energy and Tourism and the Ministry of Economy and Competitiveness and by means of a decision published in the Official State Gazette (BOE), the reference markets for electronic communications networks and services, among which shall be included the corresponding wholesale and retail reference markets and the geographical extension of said markets, the characteristics of which may justify the imposition of specific obligations.

In any case, the National Authority on Markets and Competition, in application of the regulations on competition, especially Law 15/2007 of 3 July on the Defence of Competition, Articles 101 and

102 of the Treaty on the Functioning of the European Union, and Law 3/2013 on the creation of the Authority, must oversee the functioning of the various electronic communications markets, as well as the activities of the operators, whether they have significant market power or not, so as to preserve, assure and foster conditions of effective competition in these markets.

2. Bearing in mind the references cited in the preceding paragraph, the National Authority on Markets and Competition shall also carry out an analysis of the aforementioned markets:

a) Within a maximum term of three years from the adoption of a prior measure concerning that market. However, as an exception, this term may be extended to a maximum of three additional years when the national regulation authorities have notified a well-founded proposal for extension to the European Commission and the latter has not raised any objection to the extension notified within a term of one month.

b) Within a term of two years from the adoption of a revised recommendation on relevant markets, for the markets not previously notified to the European Commission.

If the National Authority on Markets and Competition has not concluded its analysis of a relevant market included in the Recommendation on Relevant Markets within the periods set, BEREC shall assist it, at the request of the Authority, to conclude the analysis of that specific market and set the specific obligations that must be imposed. the National Authority on Markets and Competition, with this cooperation, shall notify the European Commission of the planned measure within a term of six months.

The Ministry of Industry, Energy and Tourism, pursuant to Article 5.2 of Law 3/2013, may request the National Authority on Markets and Competition to carry out an analysis of a particular electronic communications market when there are reasons of general interest or signs of a lack of effective competition are noted.

In the annual or multi-year action plans that the National Authority on Markets and Competition adopts, in which its objectives and priorities in terms of the provisions of Article 20.16 of Law 3/2013 must be stated, the Authority must identify the relevant markets that it is going to analyse and the actions needed to carry out said analysis properly within the time frames laid down in this section.

Within the framework of the annual parliamentary audit referred to in Article 39.1 of Law 3/2013, the President of the National Authority on Markets and Competition must report on the results of the market analyses and compliance with the time frames laid down in this section.

3. The purpose of the analysis referred to in the foregoing section shall be to determine whether the various reference markets are developing in an environment of effective competition. If such is not the case, the National Authority on Markets and Competition, with a prior report from the Ministry of Industry, Energy and Tourism and the Ministry of Economy and Competitiveness, shall identify and make public the operator or operators that have significant power in each market considered.

When one or more operators have, individually or jointly, significant power in a reference market (primary market), the National Authority on Markets and Competition may declare that they also have such power in another reference market closely related to the first one (secondary market) when the ties between the two are such that it is possible to exert the same power in the secondary market as in the primary market, thereby reinforcing the operator's market power. In this case, appropriate specific obligations may be imposed in the secondary market, pursuant to the following section.

4. In markets where it is found that no effective competitive environment exists, the National Authority on Markets and Competition, with a prior report from the Ministry of Industry, Energy and Tourism and the Ministry of Economy and Competitiveness, shall impose the appropriate specific obligations that may be required of the operators that have been identified as operators with significant market power. For these purposes, it may maintain or alter any specific obligations that may previously have been imposed. In determining said specific obligations, preference shall be given to measures in the wholesale market before actions in the corresponding retail markets.

The specific obligations referred to in the preceding paragraphs shall be based on the nature of the problem identified, proportionate and justified in fulfilment of the objectives of Article 3 of this Law. Said obligations shall remain in force for as long as is strictly necessary.

5. In the markets in which effective competition is found to exist, the National Authority on Markets and Competition shall cancel any specific obligations that may have been imposed on the operators due to their having been declared to have significant power in said markets.

Article 14. *Specific obligations applicable to operators with significant power in reference markets.*

1. The National Authority on Markets and Competition may impose specific obligations on operators that have been declared to have significant market power in accordance with this Article; such obligations to be imposed in such manner and on such conditions as may be established in the implementing regulations of section 5 of this Article, and covering the following areas:

a) Transparency, in regard to interconnection and access, whereby the operators must publish certain kinds of information, such as accounting information, technical specifications, network characteristics, supply and use conditions, including, where appropriate, the conditions that could limit access to or the use of services or applications, such as pricing. In particular, when in accordance with letter b) non-discrimination obligations are imposed on an operator, said operator may be required to publish a reference offer.

In addition, steps shall be taken to ensure that operators on whom obligations related to wholesale access to network infrastructure are imposed in accordance with letter d) have a reference offer available. The minimum content of the items that said offer must contain shall be established in a Royal Decree.

b) Non-discrimination, which shall ensure, in particular, that the operator applies equivalent conditions in similar circumstances to other operators that provide equivalent services and provide third parties with services and information with the same quality as those provided for their own services or those of their subsidiaries or associates and on the same conditions.

c) Separate accounting, in the format and using the methodology specified, as appropriate.

d) Access to and the use of specific network elements or resources, as well as associated resources and services, such as identity, location and presence services.

e) Price control, such as setting prices, cost-oriented pricing and setting up cost accounting, with the aim of ensuring competitive price formation and preventing excessive prices and uncompetitive margins at the expense of end-users. The National Authority on Markets and Competition shall oversee the price control mechanisms that are imposed, to ensure that they serve to foster effective competition and benefits to consumers and users in terms of the pricing and quality of services. To encourage investment by the operator, especially in next-generation networks, the National Authority on Markets and Competition shall take into account the investment made, allowing for a reasonable rate of return on the capital invested, after taking into consideration all the specific risks of a particular new investment project.

2. In exceptional and duly justified circumstances, after submitting to the consultation mechanism provided for in the eighth additional provision, the National Authority on Markets and Competition may impose specific obligations in regard to access or interconnection that are not limited to the matters listed in the preceding section.

3. When the National Authority on Markets and Competition studies the appropriateness of imposing the specific access obligations laid down in section 1, letter d) of this Article, the following elements, in particular, must be considered:

a) the technical and economic feasibility of using or installing resources that are in competition with each other, in view of the market's rate of development, bearing in mind the nature and type of

the interconnection or access in question, including the feasibility of other prior access products, including access to ducts.

b) the possibility of providing the proposed access, in relation to the available capacity, the initial investment by the owner of the resources, not forgetting the public investment made or the risks inherent in the investments,

c) the need to safeguard long-term competition, paying special attention to economically efficient infrastructure-based competition,

d) when applicable, the relevant intellectual property rights and the provision of services throughout Europe.

4. When the National Authority on Markets and Competition imposes specific obligations on a public electronic communications network operator to facilitate access, it may establish certain technical or operational conditions for the above-mentioned operator or the beneficiaries of this access, providing this is necessary to ensure the normal operation of the network, to be established by Royal Decree. Obligations to comply with specific standards or technical specifications shall be in accordance with the standards referred to in Article 11.

5. In a Royal Decree, the Government shall identify the specific obligations that the National Authority on Markets and Competition may impose on the reference markets considered in this Article and shall set the conditions for their imposition, amendment or cancellation.

Article 15. *Conflict resolution.*

1. The National Authority on Markets and Competition shall resolve any disputes arising in relation to obligations that exist by virtue of this Law and its implementing regulations between operators or between operators and other entities that benefit from the access and interconnection obligations, in accordance with the definition of the concepts of access and interconnection given in Appendix II to this Law.

After hearing the parties, the National Authority on Markets and Competition shall issue a binding ruling on the points that are the object of the dispute, within the term indicated in the Law on the creation of this Authority, without prejudice to the possibility of provisional measures being adopted up to the time at which the final ruling is pronounced.

2. In the event of a cross-border dispute in which one of the parties is domiciled in another European Union member state, the National Authority on Markets and Competition shall, if any party so requests, coordinate efforts, in the terms to be laid down in a Royal Decree, to find a solution to the dispute with the other national regulatory authority or authorities involved.

The National Authority on Markets and Competition may ask BEREC to issue a ruling on the measures to be taken to resolve the dispute.

When such a request has been sent to BEREC, the National Authority on Markets and Competition must wait for BEREC's ruling before taking measures to resolve the dispute. This shall not constitute an obstacle to the National Authority on Markets and Competition's adopting urgent measures when necessary.

Any obligation imposed on a company by the National Authority on Markets and Competition in the resolution of a dispute must take into account as much as possible the ruling issued by BEREC.

CHAPTER IV

Separation of functions.

Article 16. *Mandatory separation of functions.*

1. When the National Authority on Markets and Competition reaches the conclusion that the specific obligations imposed, pursuant to Article 14, have not been enough to secure effective

competition and that there continue to be significant, persistent competition problems or market failures related to wholesale access product markets, it may decide to impose, as an exceptional measure, on the operators with significant market power in the vertically integrated markets, the obligation to transfer the activities relating to the wholesale supply of access products to a corporate unit that acts independently.

That business unit shall supply access products and services to all companies, including other corporate units of the parent company, with the same time frames, terms and conditions, especially in reference to pricing and service levels, and using the same systems and processes.

Imposing the obligations of functional separation set forth in this Article shall be understood to be without prejudice to any structural measures that might be adopted in application of the legislation on competition.

2. When the National Authority on Markets and Competition proposes to impose a functional separation obligation, it shall draw up a proposal that includes the following:

- a) causes justifying the conclusions that it has reached,
- b) reasons why there are few possibilities, or none, of infrastructure-based competition within a reasonable time frame,
- c) an analysis of the forecast impact on the regulator, on the company, especially in reference to the workers of the separate company and the electronic communications sector as a whole, on the incentives for investment in the sector as a whole, especially in regard to the need to ensure social and territorial cohesion, as well as on the other interested parties, including the foreseen impact on infrastructure competition and any potential negative effect on consumers, and
- d) an analysis of the reasons justifying this obligation as the most appropriate measure for solving the problems of competition or market failure that were identified.

3. The planned measure shall include the following items:

- a) the nature and precise degree of separation, specifying in particular the legal status of the separate corporate entity,
- b) an indication of the assets of the separate corporate entity and the products or services that this entity must supply,
- c) governance mechanisms to ensure the independence of the personnel employed by the separate corporate entity and the corresponding incentive structure,
- d) regulations to ensure compliance with the obligations,
- e) regulations to ensure the transparency of the operating procedures, especially with regard to other interested parties, and
- f) a tracking programme to ensure compliance, including the publication of an annual report.

4. The proposal for the imposition of a functional separation obligation shall be submitted to the European Commission, after the Ministry of Industry, Energy and Tourism and Ministry of Economy and Competitiveness, as well as the National Regulation Authorities identified in Article 68, section 1, have issued reports on the proposal.

5. After the European Commission's decision, the National Authority on Markets and Competition shall carry out, in accordance with the procedure laid down in Article 13, a coordinated analysis of the different markets related with the access network. Based on its assessment, after a report from the Ministry of Industry, Energy and Tourism and the Ministry of Economy and Competitiveness, the National Authority on Markets and Competition shall impose, continue, amend or cancel the corresponding specific obligations..

Article 17. *Voluntary separation of functions.*

1. In the event that a company designated as having significant power in one or various pertinent markets plans to transfer its local access network assets, or a substantial part thereof, to a separate legal person in order to supply all retail suppliers, including its own retail divisions, with completely equivalent access products, it must inform the Ministry of Industry, Energy and Tourism, the Ministry of Economy and Competitiveness and the National Authority on Markets and Competition in advance. The companies shall also inform the Ministry of Industry, Energy and Tourism, the Ministry of Economy and Competitiveness and the National Authority on Markets and Competition of any change to said proposal, as well as the final result of the separation process.

2. In the event that voluntary functional separation takes place, the National Authority on Markets and Competition shall assess the effect of the planned transaction on the regulatory obligations imposed on that entity, performing, in accordance with the procedure laid down in Article 14, a coordinated analysis of the different markets related to the access network. Based on its assessment, after a report from the Ministry of Industry, Energy and Tourism, the National Authority on Markets and Competition shall impose, continue, amend or cancel the corresponding specific obligations..

Article 18. *Specific obligations in addition to separation of functions.*

The companies on which functional separation has been imposed or which have opted for functional separation may be subject to any of the specific obligations listed in Article 14 in any reference market in which they have been designated as having significant market power.

CHAPTER V

Numbering, routing and naming.

Article 19. *General principles.*

1. For publicly available electronic communications services, the numbers, addresses and names needed to permit their effective provision shall be provided, taking this circumstance into consideration in the respective national plans and the provisions implementing them.

2. Without prejudice to the terms of the previous section, the regulation of Internet domain names with Spain's country code (".es") shall be governed by its own specific legislation.

3. It is for the Government to adopt a Royal Decree for the national numbering, routing and naming plans, taking into consideration the applicable decisions that are adopted by international organisations and forums.

4. The Ministry of Industry, Energy and Tourism shall be responsible for drawing up proposals for national plans for presentation to the Government, and the implementing legislation for these plans, which may set conditions associated with the use of public numbering, routing and naming resources, especially the allocation of the service for which these resources will be used, including any requirement relating to the supply of said service.

5. The Ministry of Industry, Energy and Tourism is responsible for granting the rights to use regulated public resources in national numbering, routing and naming plans.

The procedures for granting these rights shall be open, objective, non-discriminatory, proportionate and transparent. These procedures shall be established in a Royal Decree.

The decisions regarding usage rights shall be adopted, communicated and made public within three weeks from the receipt of the complete application, except when comparative or competitive procedures are used, in which case the maximum term shall be six weeks from the deadline for the receipt of bids. If the deadline passes without an express decision having been communicated, the application may be understood to have been tacitly rejected. In addition, the decisions taken regarding the cancellation of usage rights shall be made public.

6. The operators that provide publicly available telephone services or other services that make

it possible to make and receive calls to numbers in the national numbering plan must route the calls that are made to national telephone numbering ranges and, when they permit international calls, to the European telephony numbering space and to other international numbering ranges, in the terms set forth in the national numbering plans or the provisions implementing them, without prejudice to the user's right to be disconnected from certain services.

Operators that provide publicly available telephone services or other services that permit international calls shall adopt appropriate measures so that calls made from or to the European telephony numbering space are routed at rates similar to those applied to calls from or to other Community countries.

7. The granting of rights to use national numbering, routing and naming resources regulated in national plans shall not lead to the granting of more rights than those laid down in this Law.

8. Operators to which the right to use series of numbers has been granted may not discriminate against other operators in regard to the sequences of numbers of numbers used to give access to the latter's services.

9. All operators and, where appropriate, manufacturers and merchants are obliged to take the measures necessary to comply with the decisions adopted by the Ministry of Industry, Energy and Tourism in regard to numbering, routing and naming.

10. End-users shall have access to the public resources regulated in national plans, in the terms laid down in the regulations implementing the law. These regulations may, when it is justified, provide for the granting to end-users of rights to use numbers, names and addresses for certain ranges that, for this purpose, are defined in national plans or the provisions implementing them.

11. Operators that operate public communications networks or provide publicly available telephone services shall, as long as it is technically and economically possible, adopt the measures necessary so that end-users may have access to services by using non-geographical European Union numbers, and they may have access, regardless of the technology and devices used by the operator, to all the numbers provided in the member states, including numbers in the member states' national numbering plans, numbers in the European telephony numbering space and Universal International Freephone Numbers.

12. The Government shall support the harmonisation of certain numbers or series of specific numbers within the European Union when this action simultaneously promotes the functioning of the single market and the development of pan-European services.

Article 20. *National plans*

1. The national plans and the provisions implementing them shall designate the services for which the numbers can be used and, where appropriate, the corresponding addresses and names, including any requirements related to the provision of such services and the conditions associated with their use, which shall be proportionate and non-discriminatory. In addition, the national plans and the provisions implementing them may include the principles for price setting and the maximum prices that may be applied for the purposes of ensuring consumer protection.

2. The content of the aforementioned plans and of the acts resulting from their implementation and management shall be public, except in regard to matters that could affect national security.

3. In order to comply with international obligations and recommendations or to ensure that sufficient numbers, addresses and names are available, the Minister of Industry, Energy and Tourism may, in an order that shall be published sufficiently in advance of its entry into effect, and with a prior binding report from the National Authority on Markets and Completion, modify the structure and organisation of the national plans or, in the absence of national or specific plans for each service, establish measures on the use of the numbering and alphanumeric resources needed to provide the services. For these purposes, the interests of the affected parties and the switching costs deriving from these changes for operators and users must be taken into account.

4. The national plans or the provisions implementing them may establish procedures for selective or comparative selection for granting rights to use numbers and names with an exceptional economic value or those that are appropriate for providing certain general interest services. These procedures shall respect the principles of openness, competition and non-discrimination for all the interested parties.

Article 21. *Retention of telephone numbers by subscribers.*

1. Operators shall guarantee, pursuant to Article 47, that subscribers with numbers in the national telephony numbering plan may retain the numbers that have been allocated to them, after requesting this in advance, regardless of the operator that provides the service. A Royal Decree shall establish the cases to which number retention is applicable, as well as the technical and administrative aspects needed to carry this out. In application of this Royal Decree and its implementing regulations, the National Authority on Markets and Competition may establish the features of and conditions for number retention, in a circular.

2. The costs arising from updating the network and system elements needed to make number retention possible must be borne by each operator without their having any right to collect any compensation whatsoever for them. The other costs produced by telephone number retention shall be shared, through a common agreement, among the operators affected by the change. In the absence of an agreement, the National Authority on Markets and Competition shall make a ruling. Connection prices for the application of the number retention features must be cost-oriented and, in the event direct charges are imposed on subscribers, they must not, in any circumstances, have a dissuasive effect on the use of said features.

Article 22. *Harmonised European numbers for services of social value.*

1. The Ministry of Industry, Energy and Tourism shall promote public knowledge of the harmonised European numbers that start with 116 and shall foster the provision in Spain of the services of social value for which these numbers are reserved.

2. The Ministry of Industry, Energy and Tourism shall adopt appropriate initiatives so that disabled end-users can have the best access possible to the services provided through harmonised European numbers that start with 116. When allocating such numbers, said Ministry shall establish the conditions that facilitate access by disabled end-users to the services that are provided through these numbers.

The aforementioned conditions may include that of making total communication by voice, text or video possible, depending on the specific service of social value in question, so that people with sensory disabilities are not excluded.

3. The public administrations with the powers to regulate or oversee each of the services provided through harmonised European numbers that start with 116 shall ensure that the public receives suitable information on the existence and use of these services of social value.

TITLE III

Public service obligations and rights and public obligations and rights for the operation of networks and the provision of electronic communication services.

CHAPTER I

Public service obligations.

Section 1. Delimitation

Article 23. *Delimitation of public service obligations.*

1. The purpose of this chapter is to ensure the existence of publicly available electronic communications systems, of suitable quality throughout the country by means of real competition and real freedom of choice, and to deal with the circumstances in which the needs of end-users are not satisfactorily fulfilled by the market.

2. Operators shall be subject to a public service and public obligation regime, pursuant to this Title. When public service obligations are imposed in accordance with the provisions in this chapter, the regime established for the granting of public service laid down in the revised text of the Public Sector Contracts Act, approved by Royal Legislative Decree 3/2011 of 14 November, shall be applied complementarily.

3. Compliance with the public service obligations for the operation of public networks and the provision of electronic communications services for which these obligations are required shall be carried out with respect for the principles of equality, transparency, non-discrimination, continuity, adaptability, availability and permanence and in accordance with the terms and conditions to be set in a Royal Decree.

4. The Ministry of Industry, Energy and Tourism shall be responsible for monitoring and exercising the powers of the Administration regarding the public services and public obligations referred to in this Article.

5. When the Ministry of Industry, Energy and Tourism finds that any of the services referred to in this Article are being provided in competition, with pricing, coverage and service quality conditions similar to those that the appointed operators must provide, it may, with a prior report from the National Authority on Markets and Competition and after hearing the interested parties, decide to end its being provided as a public service obligation and, as a result, the funding provided for such obligations.

Article 24. *Categories of public service obligations.*

Operators are subject to the following categories of public service obligations:

- a) The universal service in the terms contained in section 2 of this chapter.
- b) Other public service obligations imposed for reasons of general interest, in the manner and on the conditions set forth in section 3 of this chapter.

Section 2. The universal service.

Article 25. *Concept and scope of application.*

1. The universal service is understood to be a defined set of services, the provision of which is assured to all end-users regardless of their geographical location, with a particular quality and at an accessible price.

Under the above-mentioned universal service concept, assurance must be provided, on such terms and conditions as are determined by the Government in a Royal Decree:

- a) that all end-users can obtain a connection to the public electronic communications network from a fixed location as long as their requests are considered reasonable in the terms laid down in a Royal Decree, which shall include, among other factors, the cost of their provision. that the connection allows voice, fax and data communications, at a speed that is sufficient for accessing the Internet in a functional manner. The connection to the public communications network with functional access to the Internet must permit a broadband communications data download speed of 1 Mbit per second. The Government may update this speed depending on social, economic and technological advances and the competitive conditions in the market, taking into consideration the services used

by the majority of users.

b) All reasonable requests for the provision of a publicly available telephone service over the connection referred to in the foregoing paragraph shall be met, so that it is possible to make and receive domestic and international telephone calls.

c) A general subscriber number telephone directory, whether printed or electronic, that is updated at least once a year shall be made available to subscribers to the publicly available telephone service. The groups of subscribers who may request that the printed directory be delivered to them shall be determined in a Royal Decree. In addition, at least one subscriber number general information service shall be made available to all end-users of said service, including users of public pay telephones. All subscribers to the publicly available telephone service shall be entitled to be listed in the aforementioned general directory, without prejudice, in all cases, to the respect for the regulations that govern the protection of personal information and the right to privacy.

d) A sufficient supply of public pay telephones and other public voice telephony access points shall exist throughout the country to reasonably satisfy the needs of end-users concerning geographical coverage, the number of telephones or other access points, and the quality of the services, to ensure accessibility of these telephones by disabled users and that emergency calls can be made free of charge from public pay telephones, without having to use any means of payment, by using the single Spanish emergency call number 112 and other Spanish emergency numbers.

e) Disabled end-users shall have access to the services in paragraphs b), c) and d) of this section at a level equivalent to that enjoyed by other end-users.

f) Consumers who are natural persons shall be offered, on transparent, public and non-discriminatory conditions, rate options or packages that differ from those applied under normal business operating conditions with the aim of ensuring, in particular, that people with special social needs can have access to the network and to the services that make up the concept of the universal service. With the same aim, when appropriate, price capping, common rates, geographical averaging or other schemes similar to the features included in this Article may be applied.

The Ministry of Industry, Energy and Tourism shall oversee the evolution and level of public rates for the items that form part of the universal service, whether they are provided by the appointed operator or are available on the market should no operators have been appointed for these services, in particular in relation to national consumer prices and income.

2. Measures may be adopted in a Royal Decree to ensure that disabled end-users can also benefit from the ability to choose operators that the majority of end-users enjoy. In addition, systems of direct aid may be set up for consumers who are natural persons with low incomes or with special social needs.

3. All the obligations included in the universal service shall be subject to the funding mechanisms laid down in Article 27.

4. In accordance with Community law, the Government may revise the scope of the universal service obligations.

Article 26. *Appointment of operators responsible for providing the universal service.*

1. When the provision of any of the items that make up the universal service is not assured by the free market, the Ministry of Industry, Energy and Tourism shall appoint one or more operators to ensure the efficient provision of said elements of the universal service, so that it covers the entire country. For these purposes, different operators may be appointed to provide different elements of the universal service and to cover different areas of the country.

2. The system for appointing the operators responsible for ensuring the provision of the services, features and offers of the universal service shall be established in a Royal Decree, subject to the principles of efficiency, transparency and non-discrimination without excluding in advance the appointment of any company. In any case, a mechanism of public bidding for said services, features

and offers shall be considered. These appointment procedures shall ensure that the provision of the universal service is profitable. They may also be used as a method for determining the net cost arising from the obligations assigned, pursuant to Article 27.1.

3. When the operator appointed to provide the universal service proposes to transfer part or all of its local access network assets to a separate legal person with different ownership, it shall inform the Ministry of Industry, Energy and Tourism so that the latter can assess the repercussions of the planned transaction on the supply of fixed location access and the provision of telephone services, in accordance with Article 25. The Ministry of Industry, Energy and Tourism may, as a result of the assessment made, impose obligations on the appointed operator or amend or cancel any existing obligations.

4. The Ministry of Industry, Energy and Tourism may set performance objectives applicable to the operator or operators appointed to provide the universal service.

5. The Ministry of Industry, Energy and Tourism shall notify the European Commission of the universal service obligations imposed on the operator or operators appointed to fulfil the universal service obligations, as well as the changes relating to said obligations or the operator or operators appointed.

Article 27. *Cost and funding of the universal service.*

1. The National Authority on Markets and Competition shall determine whether the obligation to provide the universal service may involve an unjustified burden on the operators obliged to provide it.

Should it consider that said unjustified burden may exist, the net cost of providing the universal service shall be determined periodically by the National Authority on Markets and Competition in accordance with the procedures for appointment laid down in Article 26.2 or depending on the net savings that the operator would obtain if it were not obliged to provide the universal service.

To determine this net saving, the National Authority on Markets and Competition shall develop and publish a methodology in accordance with the criteria established in a Royal Decree.

2. The net cost of the obligation to provide the universal service shall be funded by a sharing mechanism, on conditions of transparency and non-discrimination, by those operators that obtain a gross annual operating income from the operation of networks or the provision of electronic communications services of more than €100 million. This figure may be updated or modified in a Royal Decree adopted by the Council of Ministers, with a prior report from the National Authority on Markets and Competition, depending on the evolution of the market and the market shares of the various operators at any given time.

3. Having set this cost, the National Authority on Markets and Competition shall determine the contributions that correspond to each of the operators that are obliged to contribute to funding the universal service.

Said contributions, as well as any applicable deductions and exemptions, shall be verified in accordance with the conditions established in a Royal Decree.

The contributions received shall be deposited in the National Universal Service Fund, which is created by this Law.

4. The purpose of the national universal service fund is to ensure that the universal service is properly financed. The cash assets from the operators obliged to contribute to the funding of the universal service shall be deposited in this fund, in a specific account designated for this purpose. The management expenses of this account shall be deducted from its balance, and the returns that it generates, if any, shall reduce the contributions of the contributors.

The contributions made by any natural or legal person that wishes to contribute, in a disinterested manner, to the funding of any feature of the universal service may be deposited into the account.

The operators subject to universal service provision obligations shall receive from this fund the amount corresponding to the net costs incurred by them due to said obligation, calculated in accordance with the procedure established in this Article.

The National Authority on Markets and Competition shall be responsible for the management of the national universal service fund. Its structure, organisation, control mechanisms and the manner and time frames in which the contributions shall be made shall be determined in a Royal Decree.

5. The existence of a direct compensation mechanism between operators may be provided for in a Royal Decree for those cases in which the size of the costs does not justify the management costs of the national universal service fund.

Section 3. Other public service obligations.

Article 28. Other public service obligations.

1. The Government may, due to the needs of national defence, public safety, road safety or services that affect the safety of persons or civil defence, impose on the operators public service obligations other than those of the universal service.

2. The Government may also impose other public service obligations, with a prior report from the National Authority on Markets and Competition and from the competent regional administration, motivated by:

- a) Reasons of territorial cohesion.
- b) Reasons of expanding the use of new services and technologies, especially to healthcare, education, social action and culture.
- c) Due to a need to facilitate communication between certain groups that are in special circumstances and are inadequately serviced, for the purpose of ensuring the adequacy of the range offered to them.
- d) Due to a need to facilitate the availability of services that involve certifying the authenticity of the content of the message sent or its transmission or reception.

3. The procedure for imposing the obligations referred to in the previous section and the manner of its funding shall be regulated in a Royal Decree.

4. In any case, the obligation to route calls to the emergency services without a right to economic compensation of any kind must be assumed both by the operators that provide electronic communications services to the public to make domestic calls to numbers in a national telephone numbering plan and by those that operate public electronic communications networks. This obligation is imposed on said operators in regard to calls routed to the 112 emergency service telephone number and to other numbers to be determined in a Royal Decree, including calls made from public pay telephones, without the need to use any means of payment in these cases.

In any case, the emergency call service shall be free to users, whichever public administration is responsible for its provision and regardless of the type of terminal used.

Operators shall provide the authorities receiving said calls, free of charge, with such information regarding the location from which they originate as may be determined in a Royal Decree.

The criteria for the accuracy and reliability of the information provided on the location of the persons making calls to the emergency services shall be established in a Royal Decree.

Access to the emergency services by disabled end-users shall be the equivalent of that enjoyed by other end-users.

The authorities responsible for providing the 112 services shall ensure that the public receives appropriate information on the existence and use of this number, in particular, through initiatives specifically directed at persons travelling to other European Union member states.

CHAPTER II

Operators' rights and the deployment of public electronic communications networks.

Section 1. The operators' rights to occupy the public domain, to be beneficiaries of the compulsory expropriation procedure and to have easements and limitations on property established in their favour.

Article 29. *Right to occupy private property.*

1. The operators shall be entitled, in the terms of this chapter, to occupy private property when this is strictly necessary for the installation of a network in the manner planned in the technical project submitted and as long as there are no technically or economically viable alternatives, either by means of compulsory expropriation or the declaration of a compulsory easement for the installation of public electronic communications network infrastructure. In both cases, they shall have the status of beneficiaries in the proceedings held, in accordance with the legislation on compulsory expropriation.

The operators shall assume the costs arising from this occupation.

The occupation of private property shall take place after the preliminary investigation of the appropriate proceedings and a decision from the Ministry of Industry, Energy and Tourism, in which all the formalities must be completed and all the guarantees established in the legislation on compulsory expropriation for the owners affected must be respected.

2. The approval by the competent body of the Ministry of Industry, Energy and Tourism of the technical project for the occupation of private property shall incorporate, in each specific case, a declaration of public utility and the need for occupation for the installation of public electronic communications networks, pursuant to the legislation on compulsory expropriation.

3. Prior to the approval of the technical project, a report shall be drawn up by the Autonomous Community (regional) body with competence for land planning, which must be issued within 30 days of its being requested. If the project affects a significant geographical area or there could be an environmental impact, this period shall be extended to three months. A report shall also be drawn up by the Town or City Councils affected on the compatibility of the technical project with current urban planning, which must be issued within 30 days of the receipt of the request.

4. In compulsory expropriations carried out for the installation of public electronic communications networks specifically linked to compliance with public service obligations, the special emergency procedure laid down in the Law on compulsory expropriation shall be followed when the resolution of the competent body of the Ministry of Industry, Energy and Tourism approving the technical project so provides.

Article 30. *Right to occupy the public domain.*

Operators shall be entitled, under the terms of this chapter, to occupy the public domain insofar as this is necessary for the establishment of the public electronic communications network in question.

The owners of the public domain shall guarantee access to said domain by all operators on neutral, objective, transparent, fair and non-discriminatory terms, and in no case may a preferential or exclusive right of access or occupation of said public domain be established for a particular operator or a specific public electronic communications network. In particular, the occupation or right of use of the public domain for the installation or operation of a network may not be granted or allocated through tendering processes.

Article 31. *Regulations applicable to the occupation of the public domain and private property.*

1. The regulations issued by any Public Administration that affect the deployment of public electronic communications networks must, in all cases, acknowledge the right of occupation of the public domain or private property for the deployment of public electronic communications networks pursuant to this title.

2. The regulations issued by the corresponding Administrations, in accordance with the terms of the preceding section, must meet, at least, the following conditions:

a) Be published in an official journal of the area corresponding to the competent administration and on the website of said Public Administration, and, in any case, be accessible by electronic means.

b) Provide a rapid, simple, efficient and non-discriminatory procedure for resolving requests for occupation, which may not exceed six months from the submission of the request, except in the case of compulsory expropriation.

c) Ensure the transparency of the procedure and that the applicable regulations promote fair and effective competition among operators.

d) Ensure compliance with the limitations imposed on administrative involvement in this Law for the protection of operators' rights. In particular, the requirement for documentation to be provided by operators must have an objective justification, be proportionate to the end pursued and be limited to what is strictly necessary.

3. If the public administrators that regulate or own the public domain referred to in this Article own, in whole or in part, or exercise direct or indirect control over operators of public electronic communications networks or publicly available electronic communications services, they must maintain separate structures for said operators and for the bodies responsible for regulating and managing the usage rights to the corresponding public domain.

Article 32. *Shared location and shared use of public or private property.*

1. Electronic communications operators may voluntarily enter into agreements among themselves to set the conditions for the shared location or shared use of their infrastructure, while being fully subject to the legislation on the defence of competition.

The public administrations shall foster the signing of voluntary agreements between operators for shared location and shared use of infrastructure located in publicly or privately owned assets, especially with a view to deploying fast and ultra-fast electronic communications network elements.

2. The shared location of infrastructure and associated resources and the shared use of the public domain or private property may also be imposed compulsorily on operators entitled to occupy public or private property. To this end, in the terms to be laid down in a Royal Decree, the Ministry of Industry, Energy and Tourism, after hearing the operators affected, and in a reasoned manner, may impose, generally or for specific cases, the shared use of the public domain or private property in which the electronic communications networks are going to be set up or the shared use of the infrastructure and associated resources.

When a competent public administration considers that for environmental, public health, public safety or urban or land planning reasons it is appropriate to impose the shared use of the public domain or private property, it may request, giving reasons, that the Ministry of Industry, Energy and Tourism initiate the proceedings laid down in the preceding paragraph. In these cases, before the Ministry of Industry, Energy and Tourism imposes the shared use of the public domain or private property, the aforementioned ministerial department must carry out the formalities so that the competent public administration that initiated the proceedings can submit its arguments within 15 working days.

3. The measures adopted pursuant to this Article must be objective, transparent, non-

discriminatory and proportionate. When appropriate, these measures shall be applied in a coordinated manner with the corresponding competent administrations.

Article 33. *Other easements and limitations on property.*

1. The purpose of the protection of the public airwaves is their optimal use, preventing their deterioration and maintaining an appropriate level of quality in the operation of the various radio communications services.

Limits may be set on the ownership and intensity of the electric field and the easements needed to protect the spectrum from certain installations or to ensure the proper functioning of radio stations or installations used to provide public services, for reasons of public safety or when it is necessary in the light of international agreements, under the terms of the second additional provision and the regulations implementing this Law.

2. Limits may also be imposed on the right to use the public airwaves to protect other assets already legally protected or public services that could be affected by the use of said public domain, in the terms to be determined in a Royal Decree. To impose these limits, a prior hearing must be given to the owners of the rights to use the public airwaves that could be affected, and the principles of transparency and openness must be respected.

Section 2. Regulation of public administrations affecting the deployment of public electronic communications networks.

Article 34. *Cooperation among the public administrations in the deployment of public electronic communications networks.*

1. The State Administration and the public administrations must cooperate through the mechanisms laid down in this Law and the other legal ordinances, in order to establish the right of electronic communications operators to occupy public and private property to deploy public electronic communications networks.

2. Public electronic communications networks constitute basic equipment, and their forecasting in urban planning instruments is structurally decisive. Their installation and deployment constitute works of general interest.

3. Regulations drawn up by the public administrations that affect the deployment of public electronic communications networks and land or urban planning instruments must include the necessary provisions to promote or facilitate the deployment of electronic communications network infrastructure in their territorial scope of action. In particular, they must ensure free competition in network installation and the provision of electronic communications services and the availability of an adequate range of places and physical spaces in which the operators can decide to place their infrastructure.

In this way, said regulations or planning instruments may not set up absolute or disproportionate restrictions on the right of the operators to occupy the public and private domain nor impose specific technological solutions, routes or places in which to install electronic communications network infrastructure. When a condition could involve making it impossible to occupy the public domain or private property, the establishment of said condition must be fully justified and be accompanied by the alternatives needed to ensure the operators' right of occupation and that this right can be exercised on equal conditions.

The public administrations shall contribute to ensuring and bringing about an adequate range of places and physical spaces in which the operators can decide to locate their infrastructure by identifying said places and physical spaces in which two objectives can be fulfilled: that of the operators being able to locate their electronic communications network infrastructure and that of obtaining an ordered deployment of networks from the territorial viewpoint.

4. The regulations drawn up by the public administrations in the exercise of their powers that affect the deployment of public electronic communications networks and land and urban planning instruments must comply with the terms of the legislation on the telecommunications sector. In particular, they must respect the essential technical parameters and requirements needed to guarantee the operation of the different networks and electronic communications services established in the eleventh additional provision and in the regulations adopted on telecommunications, and the limits on tolerable radio frequency emissions set by the State.

In the exercise of their legislative initiative, when this affects the deployment of public electronic communications networks, the public administrations shall act according to the principles of necessity, proportionality, legal certainty, transparency, accessibility, simplicity and effectiveness.

Operators shall not be obliged to provide documentation or information of any kind that is already in the hands of the Administration. The Ministry of Industry, Energy and Tourism shall establish, in a Royal Decree, the manner in which the information that the public administrations require for the exercise of their powers shall be provided to them.

5. Operators must use the ducts underground or inside buildings that permit the deployment and operation of public electronic communications networks.

In cases in which such ducts do not exist or it is not possible to use them for technical or economic reasons, operators may use overhead deployment, following those already existing.

Similarly, in the same cases, operators may run the cables and equipment that make up public electronic communications networks and their associated resources along façades, although to do this they must use, as far as possible, the deployments, ducts, installations and equipment already installed.

Deployment overhead and along façades may not be made in justified cases of historical and artistic heritage buildings or when public safety may be affected.

6. For the installation of radio stations or infrastructure used to provide the publicly available electronic communications services referred to in the third additional provision of Law 12/2012 of 26 December on urgent measures to deregulate commerce and certain services, under the terms indicated in said law obtaining of a prior licence for the installation, operation or activities, or of other licences of a similar or analogous type shall not be required.

To install public electronic communications networks or radio stations in the private domain other than those indicated in the preceding paragraph, the competent public administrations shall not require a prior licence or authorisation to be obtained for the installation, operation or activity, or an environmental permit, or any other licence or approval of a similar or analogous type that subjects said installation to prior authorisation, in the event that the operator has submitted to the public administration with the powers to grant the licence or authorisation an electronic communications network deployment or installation plan, in which said infrastructure or stations are included, and as long as said plan has been approved by said administration.

In the deployment or installation plan, the operator must include the cases in which cable and equipment will be deployed overhead or on façades in the terms indicated in the preceding section.

This deployment or installation plan to be submitted by the operator shall be subject to the content of and must respect the technical conditions required by a Royal Decree adopted in the Council of Ministers.

The plan for the deployment or installation of a public electronic communications network shall be understood to have been approved if, two months having elapsed since its submission, the competent public administration has not issued an express ruling.

The prior licences and authorisations that, in accordance with preceding paragraphs, may not be required, shall be replaced by formal statements, pursuant to Article 71 bis of Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, regarding compliance with legal provisions laid down in current law. In any case, the declaring party must be in possession of the receipt for payment of the corresponding tax when this is mandatory.

The formal statement must contain an explicit statement of compliance with those requirements that can be required pursuant to current legislation, including being in possession of the documentation certifying this.

When a variety of actions related to the infrastructure or radio station must be carried out, the formal statements shall be processed together whenever this is possible.

The submission of a formal statement, with the consequent effect of permitting as of that time the execution of the installation, shall not prejudice the situation and the effective adaptation of the conditions of the infrastructure or radio station to the applicable legislation, nor shall it limit the exercise of the administrative powers of checking, inspection, sanction and, in general, monitoring that have been assigned to the administration at any level, state, Autonomous Community (regional) or local, by the sectoral regulations applicable in each case.

Lack of precision, falsehood or omission of an essential nature, in any information, statement or document accompanying or included in a formal statement, or failing to submit a formal statement shall determine the impossibility of operating the installation and, where appropriate, the obligation to remove it as of the time such facts are proven, without prejudice to any criminal, civil or administrative liabilities that may arise.

The elements of a formal statement that have said essential nature will be established by regulation.

7. In the event that technological innovation or technical adaptation work is done on fixed or mobile public electronic communications network infrastructure, including electronic communications radio stations, already located in the public or private domain, involving the incorporation of new equipment or broadcasting on new frequency bands or with other technologies, without altering elements of the civil engineering or mast, no type of concession, authorisation or new licence or modification of the existing one or formal statement or prior notification of the public administrations with competence for land, urban or environmental planning shall be required.

8. When the public administrations draw up plans that involve an alteration in the location of an infrastructure or element of an electronic communications transmission network, they must arrange a prior hearing for the operator that is the owner of the infrastructure affected, so that the latter may present the pertinent arguments on the technical and economic aspects and of any other kind regarding the planned alteration.

Article 35. Mechanisms for cooperation between the Ministry of Industry, Energy and Tourism and the public administrations for the deployment of public electronic communications networks.

1. The Ministry of Industry, Energy and Tourism and the public administrations have the duties of reciprocal information and mutual collaboration and cooperation in the exercise of their regulatory actions, which can affect telecommunications, pursuant to current regulations.

This collaboration shall be organised, through the mechanisms established in the following sections, which may be supplemented by coordination and cooperation agreements between the Ministry of Industry, Energy and Tourism and the competent public administrations, guaranteeing in all cases the holding of a hearing for the interested parties.

2. The bodies responsible for the processes of approving, amending or revising land or urban planning instruments that affect the deployment of public electronic communications networks must receive a timely report from the Ministry of Industry, Energy and Tourism. This report shall address the alignment of said planning instruments with this Law and with the legislation on the telecommunications sector and the needs of public electronic communications networks in the territorial scope to which they refer.

The aforementioned mandatory report shall be prior to the approval of the planning instrument in question and shall be binding in regard to its adaptation to the legislation on the telecommunications sector, in particular, the legal system for telecommunications established by this Law and its implementing regulations, and it must expressly indicate the points and aspects in respect of which it

is issued with said binding power.

The Ministry of Industry, Energy and Tourism shall issue the report within a maximum of three months. Without prejudice to the provisions in Article 83.4 of Law 30/1992 of 26 November, when said deadlines passes, the report shall be understood to have been issued with a favourable decision and the formalities for the planning instrument may be continued.

In the absence of a request for the mandatory report, the corresponding land or urban planning instrument may not be approved in regard to the exercise of state powers over telecommunications.

In the event that the report is not favourable, the bodies responsible for handling the approval, amendment or revision process of land or urban planning instruments shall have a maximum of one month, from the receipt of the report, to send to the Ministry of Industry, Energy and Tourism their arguments against the report, motivated by environmental, public health, public safety or urban or land planning reasons.

In light of the arguments presented, the Ministry of Industry, Energy and Tourism shall issue a new report within a maximum of one month from the receipt of the arguments. Without prejudice to the provisions in Article 83.4 of Law 30/1992 of 26 November, when said deadlines passes, the report shall be understood to have been issued with a favourable decision and the formalities for the planning instrument may be continued. The report is binding in nature, so that if the report is once more unfavourable, the corresponding land or urban planning instrument may not be approved in regard to the exercise of state powers over telecommunications.

3. In an order, the Minister of Industry, Energy and Tourism may establish the manner in which the reports referred to in the preceding section must be requested and the information to be provided by the requesting body, depending on the type of land or urban planning instrument. It may require the competent public administrations to handle their processing electronically.

4. Insofar as the installation and deployment of electronic communications networks constitute works of general interest, all the public administrations are obliged to facilitate the deployment of electronic communications network infrastructure in their territorial scope of action, for which they must duly comply with the duties of reciprocal information and mutual collaboration and cooperation in the exercise of their actions and powers.

In the absence of an agreement between the public administrations, when the need for public electronic communications networks is fully justified, and as long as they meet the technical parameters and requirements essential for ensuring the operation of electronic communications networks and services established in section 4 of the preceding Article, the Council of Ministers may authorise the specific placement or route of an electronic communications network infrastructure. In this case, the competent public administration must necessarily incorporate into its respective planning instruments the indispensable corrections so as to include them in its determinations.

5. The processing by the competent public administration of a precautionary measure that prevents or freezes, or of a decision that rejects the installation of network infrastructure that meets the parameters and technical requirements needed to guarantee the operation of the different electronic communications networks and services laid down in section 4 of the preceding Article, except in historical and artistic heritage buildings, shall be the object of a prior mandatory report from the Ministry of Industry, Energy and Tourism, which has a maximum of one month to issue said report and a decision after, where appropriate, the appropriate attempts to find a negotiated solution with the bodies responsible for processing said measure or decision.

Without prejudice to the provisions in Article 83.4 of Law 30/1992, of 26 November, when said period elapses, the report shall be understood to have been issued with a favourable decision and the formalities for the measure or decision may be continued.

In the absence of the mandatory report, and in the event that the report is not favourable, the measure or decision may not be approved.

6. The Ministry of Industry, Energy and Tourism shall promote, with the nationwide local government association with the greatest presence, the drawing up of a standard form for the formal

statement referred to in section 6 of the preceding Article.

7. Similarly, the Ministry of Industry, Energy and Tourism shall approve recommendations for the drawing up by the competent public administrations of the rules or instruments included in this section, which may contain model municipal ordinances created jointly with the nationwide local government association with the greatest presence. In the case of municipalities, the request for the report referred to in section 2 of this Article may be replaced by submission to the Ministry of Industry, Energy and Tourism of the planned instrument accompanied by a statement from the Mayor of the municipality certifying its compliance with the above-mentioned recommendations.

8. The Ministry of Industry, Energy and Tourism may create, in a Royal Decree, a single point of contact through which the electronic communications operators will electronically access all the information regarding the conditions and procedures applicable to the installation and deployment of electronic communications networks and associated resources.

The Autonomous (regional) Communities and local corporations may join the point of single contact, by signing the appropriate cooperation agreement with the Ministry of Industry, Energy and Tourism. In this case, the electronic communications operators must submit, in electronic format and through this point of contact, the formal statements referred to in section 6 of the preceding Article and permits of any kind to occupy the public and private domain needed to deploy said networks that are addressed to that Autonomous Community or local corporation.

The single point of contact shall be managed by the Ministry of Industry, Energy and Tourism and it shall be responsible for providing the Autonomous Communities and local corporations that have joined said point of contact with all the formal statements and requests for the installation and deployment of electronic communications networks and associated resources that have been submitted by the electronic communications operators.

The Ministry of Industry, Energy and Tourism, the Autonomous Communities and the nationwide local government association with the greatest presence shall promote the use of this single point of contact by all the public administrations with a view to reducing administrative burdens and costs, facilitating communication between the operators and the administration and simplifying administrative formalities.

Article 36. Provision of electronic communications infrastructure in urban planning projects and civil engineering work funded with public resources.

1. When urban planning projects are undertaken, the technical project must provide for the installation of civil engineering work infrastructure to facilitate the deployment of public electronic communications networks. It may also include passive network elements and equipment under the terms set in the technical telecommunications regulations implementing this Article.

The infrastructure that is installed to facilitate the deployment of public electronic communications networks in accordance with the preceding paragraph shall form part of the resulting set of urban development works and shall then be included in the municipal public domain. The public administration that owns said public domain shall make this infrastructure available to the operators that are interested, on conditions of equality, transparency and non-discrimination.

The dimensioning and minimum technical characteristics that this infrastructure must meet shall be established in a Royal Decree.

2. Civil engineering work funded totally or partially from public funds shall include the installation of associated resources and other civil engineering infrastructure to facilitate the deployment of public electronic communications networks, which shall be made available to the operators that are interested on conditions of equality, transparency and non-discrimination.

Section 3. Access to infrastructure capable of housing public electronic communications networks

Article 37. *Access to infrastructure capable of housing public electronic communications networks.*

1. The public administrations that own infrastructure capable of being used for the deployment of public electronic communications networks shall facilitate access to said infrastructure, as long as said access does not hamper the continuity and security of the public services being provided by their owner in said infrastructure. Said access shall be provided to the operators that are installing or operating public electronic communications networks under objective conditions of transparency and non-discrimination. In no circumstances may any preferential or exclusive right of access to the aforementioned infrastructure be established for the benefit of a particular operator or for a specific electronic communications network. In particular, access to said infrastructure for the installation or operation of a network may not be granted or allocated through tendering processes.

2. The bodies or companies responsible for managing state transport infrastructure, as well as companies and operators from sectors other than electronic communications that are the owners or managers of infrastructure in the public domain of the State, Autonomous Communities, local authorities or beneficiaries of compulsory expropriation that may be used for the deployment of public electronic communications networks shall facilitate access to said infrastructure by operators that are installing or operating public electronic communications networks, as long as said access does not hinder the continuity and security of the services being provided in said infrastructure by their owner. In particular, this access shall be granted in regard to road, railway, port, airport, water supply, drainage and transport infrastructure, and gas and electricity transport and distribution infrastructure. Access must be provided on conditions of equality, transparency and non-discrimination.

3. The infrastructure capable of being used for the deployment of public electronic communications networks shall be understood to be pipes, overhead infrastructure, ducts, boxes, chambers, cabinets and any associated resource for deploying and housing electronic communications cables, equipment, devices or any other similar resource needed for the deployment and installation of networks.

4. The procedures, deadlines, requirements and conditions on which access shall be provided to the infrastructure capable of being used for the deployment of public electronic communications networks, as well as the causes for which said access can be denied, shall be established in a Royal Decree.

5. The Ministry of Industry, Energy and Tourism may require the public administrations and their bodies and companies, as well as the companies and operators referred to in the first sections of this Article to submit the information needed to draw up in a coordinated manner a detailed inventory of the nature, availability and geographical location of the infrastructure capable of being used for the deployment of public electronic communications networks. Said inventory shall be provided to the operators of electronic communications networks and services.

6. The parties shall freely negotiate the access agreements referred to in this Article and their conditions, including financial consideration. Any of the parties may submit a dispute on the access and its conditions to the National Authority on Markets and Competition, which, having heard the parties, shall issue a binding ruling on the points that are the object of the conflict, within the period indicated in Law 3/2013 of 4 June on the creation of the National Authority on Markets and Competition, without prejudice to the possibility of provisional measures being adopted up to the time when the final ruling is pronounced.

7. The public administrations that own the infrastructure referred to in this Article shall be entitled to set the financial consideration that corresponds to the use made of the infrastructure by the operators.

Article 38. *Access to or use of electronic communications networks owned by bodies or entities managing state transport infrastructure.*

1. Bodies or entities belonging to the General State Administration and any other entities or companies responsible for managing state transport infrastructure that provide electronic communications services, directly or through intermediate entities or companies, or market the operation of public electronic communications networks, shall negotiate with the electronic communications network and service operators interested in access to or the use of the electronic communications networks of which they are the owners.

2. The conditions for access to or the use of these networks must be fair, non-discriminatory, objective, transparent, neutral and at market prices, as long as at least the recovery of investment costs and their operation and maintenance are assured, for all electronic communications network and service operators, including those belonging to or linked with said bodies and entities. In no circumstances may any preferential or exclusive right of access to or use of said networks be established for the benefit of a particular operator or a specific public electronic communications network. In any case, the safety of the transport infrastructure in which the electronic communications networks referred to in this Article are installed and of the services provided in said infrastructure must be preserved.

3. The parties shall freely negotiate the access or use agreements referred to in this Article, based on the conditions laid down in the preceding section. Any of the parties may submit a dispute on the access and its conditions to the National Authority on Markets and Competition, which, having heard the parties, shall issue a binding ruling on the points that are the object of the conflict, within the term indicated in the Law on the creation of said Authority, without prejudice to the possibility of provisional measures being adopted up to the moment at which the final ruling is pronounced.

CHAPTER III

Communications privacy and the protection of personal information and public obligations related to electronic communications networks and services.

Article 39. *Communications privacy.*

1. Operators that operate public electronic communications networks or provide publicly available electronic communications services must guarantee the privacy of the communications in accordance with Article 18.3 and 55.2 of the Constitution, and must adopt the necessary technical measures.

2. Operators are obliged to carry out such interception as may be authorised pursuant to Article 579 of the Criminal Procedure Act, Organic Law 2/2002 of 6 May regulating the prior judicial control of the National Intelligence Centre and other legislation with the rank of an organic law. In addition, they must assume the costs of the measures that are laid down in this Article and in the corresponding regulations.

3. The interception referred to in the preceding section must be provided for any communication that originates from or is destined for the network termination point or the specific terminal that is identified in the legal interception order, even if it is destined for a storage or information processing device. Similarly, the interception may take place on a known terminal and with temporary location data for communications from public places. When there is no fixed link between the subject of the interception and the terminal used, the latter may be identified dynamically when the subject of the interception activates it for the communication with a personal identification code.

Access shall be provided for all types of electronic communications, in particular, due to their penetration and coverage, those made using any method of telephony and data transmission service, whether communications using video, audio, messaging, file exchange or fax transmission.

4. The access provided shall serve both for monitoring the electronic communications

intercepted and the information on the interception and for transmitting them to reception centres, and it shall permit the signal used for the communication to be captured.

5. The legally bound parties must provide the authorised official with the data shown in the legal interception order, unless they are not available due to the characteristics of the service, including those listed below:

a) The identity or identities of the party that is the object of the interception measure.

Identity is understood to be: a technical label that can represent the origin or destination of any electronic communications traffic, generally identified by a physical electronic communications identity number (such as a telephone number) or a logical or virtual electronic communications identity code (such as a personal number) that the subscriber can assign to a physical access on a case-by-case basis.

b) The identity or identities of the other parties involved in the electronic communication.

c) The basic services used.

d) The supplementary services used

e) The address of the communication.

f) The reply indicator.

g) The cause of termination.

h) Time stamps.

i) Information on the location.

j) Information exchanged over the control or signal channel.

6. In addition to the information regarding interception included in the preceding section, the legally bound parties must provide the authorised official, except when they are not available due to the characteristics of the service, with the following details on any of the parties that are involved in the communication that are customers of the legally bound party:

a) Identity of the natural or legal person.

b) Address to which the provider sends notifications.

And, even if not a subscriber, if the service in question permits any of the following:

c) The number of the service holder (both the directory number and all the subscriber's electronic communications identities).

d) Terminal identification number.

e) Account number assigned by the Internet service provider.

f) E-mail address.

7. Together with the details listed in the preceding sections, the legally bound parties must provide, except when due to the characteristics of the service it is not available, information on the geographical location of the terminal or network termination point where the call originated, and the location of the destination of the call. In the case of mobile services, the most accurate position possible of the communication point shall be provided and, in all cases, the identity, location and type of base station affected.

8. Of the details listed in sections 5, 6 and 7 of this Article, the legally bound parties shall be obliged to provide the authorised official only with those included in the legal interception order.

9. Prior to the execution of the legal interception order, the legally bound parties must provide the authorised official with information on the services and characteristics of the telecommunication system used by the parties that are the object of the interception measure and, if they are in their possession, the respective names of the subscribers with their national identity document, foreigner's identity card or passport numbers in the case of natural persons, or the name and tax identification

code in the case of legal persons.

10. The legally bound parties must at all times have one or more interfaces ready through which the electronic communications intercepted and the information regarding the interception will be transmitted to the interception reception centres. The characteristics of these interfaces and the format for transmitting the communications intercepted to these centres shall be subject to the technical specifications established by the Ministry of Industry, Energy and Tourism.

11. In the event that the legally bound parties apply any compression, encryption, digitisation or encoding of any kind to the communications that are the object of legal interception, they must hand over the communications stripped of the effects of such procedures, as long as they are reversible.

The communications intercepted must be provided to the interception reception centre with a quality no less than that obtained by the recipient of the communication.

Article 40. *Interception of electronic communications by the technical services*

1. With full respect for the right to communication privacy and the requirement, pursuant to the Criminal Procedure Act, of court authorisation for the interception of content, when it is necessary, in order to perform the tasks of monitoring the effective use of the public airwaves or to locate the source of harmful interference, to use signal interception equipment, infrastructure or technical installations not intended for the general public, the following shall apply:

a) The telecommunications administration must design and set up its technical signal interception systems in such a way as to minimise the risk of affecting the content of communications.

b) When, as a result of the technical interception performed, evidence is gained of the content, the media on which these appear must be safeguarded until the end of any disciplinary proceedings that may take place or, in other cases, be destroyed immediately. In no circumstances may they be disclosed.

2. The same rules shall apply to the surveillance of the proper use of the networks and the proper provision of electronic communications services.

3. The contents of this Article are understood to be without prejudice to the powers assigned to the Administration under Article 60.

Article 41. *Protection of personal information.*

1. The operators that operate public electronic communications networks or provide publicly available electronic communications services, including public communications networks that support data identification and collection devices, must adopt the appropriate technical and management measures to maintain security when operating their network or providing their services, so as to guarantee the protection of personal details. Said measures shall include at least:

a) Assurance that only authorised personnel have access to personal information for the purposes authorised by the law.

b) The protection of stored or transmitted personal information from accidental or unlawful destruction, loss or accidental alteration or unauthorised or unlawful storage, processing, access or disclosure.

c) Assurance of the effective application of a security policy relating to the processing of personal information.

The Spanish Data Protection Agency, in the exercise of its competence to ensure security in the processing of personal information, may examine the measures adopted by the operators that

operate public electronic communications networks or provide publicly available electronic communications services and may formulate recommendations on best practices in regard to the level of security that must be attained with these measures.

2. In the event that there is a particular risk of the security of the public network or the electronic communications services being breached, the operator that operates said network or provides the electronic communications services shall inform subscribers of said risk and the measures to be adopted.

3. In the event of a breach of personal information, the publicly available electronic communications service operator shall notify the Spanish Data Protection Agency without undue delay of said breach. If the data breach could have a negative effect on the privacy or the personal information of a subscriber or individual, the operator shall also notify the subscriber or individual of the breach without undue delay.

It will not be necessary to notify a subscriber or individual affected of a breach of the personal information if the provider has proven to the satisfaction of the Spanish Data Protection Agency that it has applied the appropriate technological protective measures and that these measures have been applied to the data affected by the security breach. Such protective measures might include for example those that convert the data so that it is incomprehensible to any person not authorised to access them.

Without prejudice to the provider's obligation to inform the subscribers or individuals affected, if the provider has not already notified the subscriber or individual of the personal information breach, the Spanish Data Protection Agency may require it to do so, after evaluating the possible adverse effects of the breach.

In the notification to the subscriber or individual, at least the nature of the breach of personal information shall be disclosed and the contact points from which further information can be obtained, and measures shall be recommended on how to lessen the possible adverse effects of said breach. In the notification to the Spanish Data Protection Agency, the consequences of the breach shall also be described and the measures planned or adopted by the provider in regard to the breach of personal information.

Operators must keep an inventory of breaches of personal information, including the facts relating to such breaches, their effects and the measures adopted in this regard, which shall be sufficient to permit the Spanish Data Protection Agency to verify compliance with the notification obligations regulated in this section. The format and content of the inventory may be established in a Royal Decree.

For the purposes laid down in this Article, a breach of personal information shall be understood to be a security breach that causes the accidental or unlawful destruction, loss, alteration, disclosure or unauthorised access to personal information transmitted, stored or processed in another manner related to the provision of a public access electronic communications service.

The Spanish Data Protection Agency may adopt guidelines and, when necessary, issue instructions on the circumstances in which the provider is required to notify the breach of personal information, the form that must be adopted for this notification and the manner in which it is to be carried out, in full compliance with any provisions that might be adopted in this regard by the European Commission.

4. The terms of this Article shall be without prejudice to the application of Organic Law 15/1999 of 13 December on the Protection of Personal Information and its implementing regulations.

Article 42. *Storage and transfer of electronic communications data and public communications networks.*

The preservation and transfer of data generated or processed within the framework of providing electronic communications services of public communications networks to officials authorised through the corresponding court authorisation to detect, investigate and try serious contraventions

included in the Criminal Code or in special criminal laws is governed by the provisions of Law 25/2007 of 18 October on the preservation of data related to electronic communications and public communications networks.

Article 43. *Encryption in electronic communications networks and services.*

1. Any type of information that is transmitted over electronic communications networks may be protected by encryption processes.

2. Encryption is an information security instrument. Among the conditions for its use, when it is used to protect the confidentiality of the information, the obligation may be imposed to provide a General State Administration body or public body with the algorithms or any encryption process used, as well as the obligation to provide at no cost whatsoever the encryption devices for control pursuant to current legislation.

Article 44. *Integrity and security of electronic communications networks and services.*

1. Operators of publicly available electronic communications networks and services shall properly manage the security risks that could affect their networks and services so as to guarantee an adequate level of security and prevent or reduce to a minimum the impact of security incidents on users and interconnected networks.

2. Operators of public electronic communications networks shall guarantee the integrity of said networks so as to ensure the continued provision of the services that use said networks.

3. Operators that provide publicly available electronic communications networks or services shall notify the Ministry of Industry, Energy and Tourism of any security breaches or losses of integrity that have had a significant impact on the operation of the networks or services.

When appropriate, the Ministry shall inform the competent national authorities of other member states and the European Network and Information Security Agency (ENISA). It may also inform the public or require the companies to do so if it considers that the disclosure of the breach is in the public interest. Once a year, the Ministry shall submit a summary report to the Commission and ENISA on the notifications received and the measures adopted under this section.

Similarly, the Ministry shall inform the Secretary of State for Security of the Ministry of the Interior of any incidents that have affected the strategic national operators and are of interest for improving the protection of critical infrastructure, within the framework of Law 8/2011 of 28 April regulating said infrastructure. The Ministry shall also inform the National Authority on Markets and Competition of any security breaches or losses of integrity referred to in this section that affect or might affect the specific obligations imposed by said Authority on the reference markets.

4. The Ministry of Industry, Energy and Tourism shall set up mechanisms to supervise compliance with the aforementioned obligations and, where appropriate, shall issue the corresponding instructions, which shall be binding on the operators, including instructions on the deadlines for applications, so that they can adopt certain measures regarding the integrity and security of electronic communications networks and services. Among them, they may impose:

a) The obligation to provide the information needed to assess the security and integrity of their services and networks, including security policy documents.

b) The obligation to submit to a security audit performed by an independent organisation or a competent authority, and of placing the result at the disposal of the Ministry of Industry, Energy and Tourism. The cost of the audit shall be borne by the operator.

5. In particular, operators shall ensure the greatest availability possible of publicly available telephone services over public communications networks in the event of a catastrophic network failure or in cases of force majeure, and they shall adopt all measures necessary to ensure

uninterrupted access to the emergency services.

6. This Article is understood to be without prejudice to the terms of Article 4, section 4 of this Law.

CHAPTER IV

Common infrastructure and electronic communications networks in buildings.

Article 45. *Common infrastructure and electronic communications networks in buildings.*

1. The legal regulations on common electronic communications infrastructure inside buildings and building complexes shall be implemented in a Royal Decree. Said Royal Decree shall determine both the interconnection point of the interior network with the public networks and the conditions applicable to the interior network itself. It shall also regulate the assurances applicable to electronic communications services over individual systems in the absence of common electronic communications infrastructure and the system for installing this infrastructure in all the aspects not provided for in the provisions with legal ranking that regulate this matter.

2. The basic technical building regulations governing the civil engineering infrastructure in the interior of buildings and building complexes must take into consideration the support needs of electronic communications systems and networks pursuant to the regulations referred to in section 1, providing for the civil engineering infrastructure to have sufficient capacity to permit the passage of the networks of the different operators, so as to facilitate the possibility of their shared use of this infrastructure.

3. The regulations governing the common electronic communications infrastructure shall further the sustainability of buildings and building complexes, for residential, industrial, service and non-residential use, by facilitating the introduction of information and communications technologies that promote energy efficiency, accessibility and safety, and are aimed at the ongoing implementation in Spain of the concept of the digital home.

4. Operators may install the final sections of ultra-fast fixed electronic communications networks as well as the associated resources in buildings, properties and building complexes that are included, or must be included, in the horizontal property regime or in buildings that, as a whole or in part, have been or are rented for more than one year, except those that contain one single dwelling, so that any co-owner or, if applicable, lessee of the building can make use of said networks.

In the case of buildings in which there is no common electronic communications infrastructure in the interior of the building or building complex, or the existing infrastructure does not permit ultra-fast access to be installed, said installation may make use of the common elements of the building. In cases where it is not possible to perform the installation in the interior of the building or property for technical or economic reasons, the installation may be performed using the façades of the buildings.

An operator planning to install the final sections of the network and associated resources referred to in this section must inform the residents' association or, where appropriate, the owner of the building in writing, together with a plan for the action that he intends to carry out, before starting any installation. The format, content and formal deadlines for submission both of the written communication and the action plan referred to in this paragraph shall be determined by regulation. In all cases, it shall be the operator's responsibility to prove that the written communication has been delivered.

The installation may not be performed if, within a period of one month from the communication occurring, the residents' association or the owner certifies to the operator that none of the building's co-owners or tenants is interested in having the infrastructure proposed, or states that they are going to carry out, within three months of the reply, the installation of a common electronic communications infrastructure in the interior of the building or the adaptation of the previously existing one to permit

said ultra-fast access.. When the aforementioned month has elapsed since the communication occurred without the operator's having obtained a reply, or the three months following the reply elapse without the installation of the common electronic communications infrastructure having occurred, the operator shall be empowered to start the installation of the final sections of the network and associated resources, although it will be necessary for the operator to inform the residents' association or the owner of the start date for the installation.

The procedure in the preceding paragraph shall not apply to an operator that plans to install the final sections of an ultra-fast fixed electronic communications access network and its associated resources in a building or building complex in which another operator has installed or started to install final sections of said networks, or in cases where the section in question will give continuity to an installation that is necessary in order to provide access to said networks in adjoining or nearby buildings or properties and there is no economically efficient and technically viable alternative. All the foregoing is without prejudice to the fact that, in all cases, there must be a communication a minimum of one month in advance from the operator to the residents' association or the owner together with a description of the action that it intends to undertake, before starting any installation. In any case, it shall be necessary for the operator to inform the residents' association or the owner of the start date of the installation.

5. Operators shall be responsible for any damage caused to the buildings or properties as a result of the network and associated resource installation activities referred to in the preceding paragraph.

6. An order from the Ministry of Industry, Energy and Tourism shall determine the technical aspects with which the operators must comply when installing resources associated with ultra-fast fixed electronic communications access networks and the associated civil engineering work in the cases listed in section 4 of this Article, with the aim of reducing the nuisance and burden on the public, optimising the installation of the networks and facilitating the deployment of networks by the various operators.

7. The Ministry of Industry, Energy and Tourism may impose on the operators and owners of the corresponding associated resources, after completing the formalities of informing the public, transparent, proportionate and non-discriminatory objectives regarding the shared use of the final sections of access networks, including those that run through the interior of buildings and building complexes, or up to the first concentration or distribution point on their exterior, when the duplication of this infrastructure is not economically efficient or physically feasible.

8. The Ministry of Industry, Energy and Tourism shall create and maintain a centralised, up-to-date inventory of all the buildings or building complexes that have common telecommunications infrastructure installed. Said inventory shall be made available to the operators.

CHAPTER V

Rights of end-users

Article 46. *Rights of end-users of electronic communications services.*

1. The end-users of electronic communications services shall have the specific rights recognised in this Chapter, on the terms provided herein. Operators shall be obliged to respect the rights recognised in this Chapter.

The recognition of the specific rights of end-users of publicly available electronic communications networks and services that is embodied in this Chapter is understood to be without prejudice to the rights granted to consumers in the revised text of the General Consumers' and User's Defence Act, approved by Royal Legislative Decree 1/2007 of 16 November.

2. The provisions that this law and its implementing regulations contain in regard to the specific rights of end-users of electronic communications services, in the aspects expressly laid down in the provisions in European Law from which they are derived, shall have preferential application in the

event of conflict with the provisions that generally regulate the rights of consumers and users.

Article 47. *Specific rights of end-users of publicly available electronic communications networks and services.*

1. The specific rights of end-users of publicly available electronic communications networks and services shall be established in a Royal Decree that shall regulate:

a) The right of end-users to sign contracts with the operators that provide publicly available electronic communications networks or services, as well as the minimum content of said contracts, without prejudice to the terms of Article 53.

b) The right to terminate the contract at any time. This right includes the right to terminate it in advance and with no penalties should the contractual obligations imposed by the operator be altered for valid reasons specified in it and without prejudice to other causes of unilateral termination.

c) The right to change operator, while retaining the numbers in the national telephony numbering plan in the cases in which this is contemplated, within a maximum of one working day. End-users may not be transferred to another operator against their will.

End-users must receive adequate information regarding the change of operator. This process shall be managed by the transferee operator, before and during the process, and immediately after it has concluded.

End-users' contracts with transferor operators, in regard to the services affected by retaining numbers, shall be automatically terminated once the change of operator has been concluded.

A delay in retaining numbers and abuses regarding retention on the part of operators or on their behalf shall entitle subscribers to compensation under the terms laid down in a Royal Decree, which shall also establish the cases in which said compensation will be automatic. The conditions and procedures for terminating contracts must not constitute a deterrent to changing operator.

d) The right to information, which must be truthful, effective, sufficient, transparent and comparable, on publicly available electronic communications services, without prejudice to the provisions in Article 4.

e) The cases, deadlines and conditions on which the user may, after making a request, exercise the right to disconnect certain services, including the need for an express request for access to services that are treated differently.

f) The right to continuity of service, and to obtain automatic compensation for its interruption, in the cases to be laid down in a Royal Decree.

g) The cases for approval by the Ministry of Industry, Energy and Tourism of the general terms and conditions of contracts, among which are included those signed between end-users and the operators that provide publicly available electronic communications networks or services with a public service obligation.

The administrative approval referred to in the preceding paragraph does not exclude either administrative or judicial control over the general terms and conditions contained in the aforementioned contracts, pursuant to current legislation.

h) The right to receive complete, comparable, pertinent, reliable, up-to-date and user-friendly information on the quality of publicly available electronic communications services and on the measures adopted to ensure equivalent access for disabled end-users.

i) The right to select a means of payment for a subscription to the corresponding services among those commonly used in commercial traffic.

j) The right to access the emergency services free of charge without having to use any means of payment.

k) The right to detailed, clear and error-free bills, without prejudice to the right to receive non-itemised bills at the request of the user.

l) The right to stop the automatic forwarding of calls made to their terminal by a third party.

m) The right to prevent, by means of a simple, charge-free process, the identity of their line being displayed in the calls that it generates or the identity of the line being displayed to the user that is calling them.

End users may not exercise this right when these are emergency calls using the number 112 or communications made to such entities providing emergency call services as will be determined in a Royal Decree.

For a limited period, end-users may not exercise this right when the destination line's subscriber has requested the identification of malicious or nuisance calls to his line.

n) The right to prevent, by means of a simple, charge-free process, the identity of the originating line being displayed on entering calls and to refuse entering calls from said line if it is not identified.

In this case and the preceding one, operators that provide the public with electronic communications services to make in-country calls to numbers in a national telephony numbering plan and those that operate public electronic communications networks must fulfil such conditions as are determined in a Royal Decree regarding the display, restriction and elimination of the identity of the originating and connected line.

2. Operators must provide users with a customer support service that is free of charge and has the purpose of providing information on and handling and resolving complaints or claims made by customers.

Telephone customer support services must ensure direct personal attention, in addition to the possibility of using other supplementary technical means at their disposal to improve said support. Operators shall make available to their customers methods for providing documentary evidence of the enquiries or claims made, as well as the provision of a reference number or the possibility of sending the customer a document on a durable medium.

Article 48. Right to the protection of personal information and privacy in regard to unsolicited communications, traffic and location data and subscriber directories.

1. In regard to the protection of personal information and privacy in regard to unsolicited communications, end-users of electronic communications services shall have the following rights:

a) Not to receive automatic calls with no human intervention or fax messages, with the purpose of commercial communication without having given their prior, informed consent thereto.

b) To refuse to receive unwanted calls with the purpose of sales communication that are made using systems other than those listed under the previous letter and to be informed of this right.

2. In regard to the protection of personal information and privacy in regard to traffic and location data other than traffic data, end-users shall have the following rights:

a) To be anonymous or to cancel their traffic data when they are not necessary for the purposes of transmitting a communication. The traffic data needed for the purposes of billing subscribers and the payment of interconnections may be processed only until the period has elapsed for an appeal against the bill for the service, the reimbursement of the charge made by the operator, the payment of the bill or the operator to be able to require payment.

b) For their traffic data to be used for the commercial promotion of electronic communications services or the provision of value-added services, to the extent and during the time needed for such services or commercial promotion when they have given their informed consent thereto. End-users shall have the right to withdraw their consent to the processing of traffic data at any time and with immediate effect.

c) For the processing of their location data other than traffic data only to occur when they are anonymous or they have given their prior, informed consent and only to the extent and for the time needed to provide, where appropriate, value-added services, with an unequivocal knowledge of the data that are going to be processed, the purpose and duration of the processing and the value-added service that is going to be provided. End-users shall have the right to withdraw their consent to the processing of location data other than traffic data at any time and with immediate effect.

End-users may not exercise this right when these are emergency calls using the number 112 or communications made to entities that provide emergency call services as determined by the Ministry of Industry, Energy and Tourism.

3. In regard to the protection of personal information and privacy in regard to subscriber directories, end-users of electronic communications services shall have the following rights:

- a) To appear in subscriber directories
- b) To be informed free of charge of the inclusion of their information in the directories, as well as the purposes of these directories, prior to their being included.
- c) Not to appear in the directories or to request the omission of some of their information, insofar as such information is pertinent to the purpose of the guide stipulated by their provider..

4. The provisions under letters a) and c) of section 2 of this Article are understood to be without prejudice to the obligations laid down in Law 25/2007 of 18 October on the preservation of data related to electronic communications and public communications networks.

Article 49. *Subscriber directories.*

1. The creation and marketing of directories of the subscribers to electronic communications services and the provision of information services regarding them shall take place in a system of free competition.

To this end, the companies that allocate telephone numbers to subscribers must comply with all reasonable requests to supply pertinent information for the provision of directory enquiry services and publicly accessible directories, in an approved format and under fair, objective, cost-oriented and non-discriminatory conditions. The provision of the aforementioned information and its subsequent use shall be subject to the legislation on data protection in force at any given time.

The Ministry of Industry, Energy and Tourism must supply free of charge the information provided by the operators to the entities that are going to compile the telephone directories, those that provide directory enquiry services and those that provide emergency call services, in accordance with such conditions as are established in a Royal Decree.

2. Access by end-users to directory enquiry services is shall be assured. To achieve this, the Ministry of Industry, Energy and Tourism may impose obligations and conditions on the companies that control access to end-users in regard to providing directory enquiry services that must be objective, fair, non-discriminatory and transparent.

3. The Ministry of Industry, Energy and Tourism shall adopt, providing it is technically and economically possible, measures to guarantee direct access by end-users to the directory enquiry services of other Community countries by means of voice call or SMS.

Article 50. *Quality of service.*

1. Minimum service quality requirements may be set by order of the Minister of Industry, Energy and Tourism, which, where appropriate, can be demanded of the operators of public electronic communications networks, with the aim of preventing the service from deteriorating and

traffic over the networks from being hindered or slowing down, in accordance with the procedures to be established in a Royal Decree.

The Ministry of Industry, Energy and Tourism shall provide the European Commission, in due time before setting such requirements, with a summary of the reasons for the action, the planned requirements and the proposed line of action. Said information shall also be made available to the Body of European Regulators for Electronic Communications (BEREC).

2. In addition, quality parameters, which must be quantified, and possible mechanisms for certifying the quality may be set up, with the aim of ensuring that end-users, those with disabilities, have access to complete, comparable, reliable and user-friendly information.

Article 51. *Access to numbers and services.*

1. Insofar as proves necessary in order to attain the objectives laid down in Article 3 and, in particular, to safeguard users' rights and interests, by means of Royal Decree or in National Plans for numbering, routing and naming and the provisions implementing them, requirements may be established for the minimum capacity or functionalities to be met by certain types of services.

2. Also, by means of Royal Decree, with a prior report from the National Authority on Markets and Competition, the conditions shall be established on which operators of public electronic communications networks or publicly available electronic communications services may block access to numbers or services, providing this is justified for reasons of unauthorised traffic or irregular traffic for fraudulent purposes, and the cases in which electronic communications service providers may retain the income corresponding to interconnection or other services. The National Authority on Markets and Competition may order access to be blocked to numbers or services for reasons of irregular traffic for fraudulent purposes when these are due to a conflict between operators over access or interconnection that is brought to its attention said operators. In no case may the blocking of services not included within the scope of application of the Law be required, such as services to the Information Society regulated in Law 34/2002 of 11 July on Services to the Information Society and Electronic Commerce.

3. A Decision from the Secretary of State for Telecommunications and the Information Society may stipulate that some numbers or ranges of numbers are to be accessible only at the express, prior request of the user, on the conditions set in said Decision, for reasons of protecting the rights of end-users of electronic communications services, in particular those relating to billing and the rates applied for providing certain services.

Article 52. *Regulation of the basic conditions of access by disabled persons.*

Basic conditions for the access of disabled persons to electronic communications-related technologies, products and services may be set in a Royal Decree. This legislation shall establish the requirements that operators must meet in order to ensure that disabled users can:

- a) Have access to electronic communications services that equivalent to that enjoyed by the majority of end-users.
- b) Benefit from the possibility of choosing a company and services that is available to the majority of end-users.

Article 53. *Contracts.*

1. Before a contract is signed between end-users and operators that operator networks or provide publicly available electronic communications services, the operators shall provide the end-users with at least the information that is laid down for these purposes in the Revised Text of the General Consumers' and User's Defence Act, approved by Royal Legislative Decree 1/2007, of 16

November.

In addition to the terms of the preceding paragraph, operators shall also provide, before the contract is signed, the specific information on the electronic communications service that established in a Royal Decree, and at least:

- a) A description of the services to be provided and the possible limitations on their use.
- b) The applicable prices and rates, with the items and particulars set in a Royal Decree.
- c) The duration of the contracts and grounds for their termination.
- d) Information on the restrictions imposed on the possibilities of using the terminal equipment supplied.
- e) The conditions applicable to number retention.

2. The content of the contracts signed between end-users and operators providing publicly available electronic communications networks or services shall be regulated in a Royal Decree, and shall include in a clear, comprehensible and easily accessible form at least the following specific content:

- a) The services provided, including, in particular:
 - i) Whether or not access to the emergency services and information on callers' locations is provided, as well as any other limitation on the provision of emergency services.
 - ii) Information on any other condition that limits access to or the use of services and applications
 - iii) The minimum service quality levels offered, in particular the time taken for initial connection and, where appropriate, other service quality parameters established by law.
 - iv) Information on any procedure used by the company to measure and manage traffic in order to avoid exhausting or saturating the network link, and information on the manner in which these procedures can affect service quality.
 - v) The types of maintenance offered and support services provided to customers, as well as the methods for contacting said services.
 - vi) Any restriction imposed by the provider on the possibilities of using the terminal equipment supplied.
- b) The subscribers' decisions regarding the possibility of including their personal information in a certain directory or not and the information in question.
- c) The duration of the contract and conditions for its renewal and for cancelling the services and terminating the contract, including:
 - i) Any minimum use or duration or other requirements for taking advantage of promotions.
 - ii) All the expenses related to number retention and other identifiers.
 - iii) All the expenses related to terminating the contract, including recovering the costs related to terminal equipment.
 - iv) The conditions on which, in the event of changing operator while retaining numbers, the transferor operator undertakes, where applicable, to reimburse any credit remaining on prepaid cards.
- d) The manner of starting the process of conflict resolution, in accordance with Article 55.
- e) The types of measures that the company may take in the event of security or integrity incidents or threats and vulnerability.

3. By means of Royal Decree it may be made mandatory for contracts to include such

information as the competent authority shall determine in regard to the use of electronic communications networks to engage in illegal activities or to disseminate harmful content, as well as the methods of protection against risks to personal security, privacy and personal information, providing they are pertinent to the service provided.

4. Operators must hand or send users the signed contract in writing or on any other medium.

Article 54. *Transparency and publication of information.*

1. A Royal Decree shall establish the conditions on which operators of public electronic communications networks or publicly available electronic communications services publish transparent, comparable, adequate and up-to-date information on the applicable prices and tariffs and, where appropriate, on the expenses and conditions related to terminating contracts, as well as information on access to and the use of the services they provide to end-users, which shall be published in a clear, comprehensible and easily accessible format.

2. The Ministry of Industry, Energy and Tourism shall promote the dissemination of comparable information so that end-users can make an independent assessment of the cost of alternative modes of use, for example, alternative directories or similar techniques, and shall regulate the conditions on which the information published by the operators or public electronic communications networks or publicly available electronic communications services can be used free of charge by third parties, with the aim of selling or permitting the use of these interactive directories or similar techniques.

3. The conditions for ensuring that the operators of public electronic communications networks or publicly available electronic communications services do the following shall be set in a Royal Decree:

- a) Offer subscribers information on the tariffs applicable to any number or service subject to specific pricing conditions, for each of the categories of services. It may also be required that said information be provided immediately before calls are made.

- b) Inform subscribers of any change in access to the emergency services or information on the location of the persons making calls on the services to which they subscribe.

- c) Inform subscribers of changes to the conditions limiting access to or the use of services and applications.

- d) Provide information on any procedure used by the provider to measure and manage traffic in order to avoid exhausting or saturating the network link, and on the manner in which these procedures can affect service quality.

- e) Inform subscribers of their right to decide whether to include their personal information in a directory and the type of information in question.

- f) Inform disabled subscribers regularly and in detail of the products and services intended for them.

4. The Ministry of Industry, Energy and Tourism may require operators of public electronic communications networks or publicly available electronic communications services to distribute, free of charge and in a standardised format, public interest information to existing and new subscribers, when appropriate, in the same manner used by them ordinarily to communicate with subscribers, which shall cover the following topics:

- a) The most common uses of electronic communications services for engaging in illegal activities or to disseminate harmful content, in particular when this infringes on the rights and freedoms of third parties, including infringements of copyright and similar rights, and their legal consequences.

- b) The methods for protecting against risks to personal security, privacy and personal information when using electronic communications services.

5. The Ministry of Industry, Energy and Tourism shall periodically publish the data resulting from the management of the conflict resolution procedure laid down in Article 55, section 1. The data shall include a level of disaggregation that allows information to be obtained regarding the services, topics and operators in respect of which the complaints were received.

Article 55. *Dispute resolution.*

1. End-users who are natural persons shall be entitled to avail themselves of an extra-judicial, transparent, non-discriminatory, simple, free procedure for resolving their disputes with operators that provide publicly available electronic communications networks or services, when such disputes refer to their specific rights as end-users of electronic communications services recognised in this Law and its implementing regulations and in accordance with Community regulations.

To this end, the Ministry of Industry, Energy and Tourism shall establish, by means of an order, a procedure for end-users who are natural persons to submit such conflicts, in accordance with the principles laid down in the preceding section. Operators shall be obliged to submit to the procedure and to comply with the ruling that ends it. In any case, the procedure adopted shall set the maximum period within which an express ruling must be notified, after which the claim shall be understood to have been tacitly rejected, without prejudice to the Telecommunications Administration's being obliged to expressly resolve the claim pursuant to Article 43 of Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure.

The ruling that is pronounced may be impugned before the administrative courts of appeal.

2. The terms of the preceding section are understood to be without prejudice to the right of end-users to submit conflicts to the Consumer Arbitrage Boards pursuant to the relevant legislation. If the Consumer Arbitrage Boards decide to hear the conflict, it shall not be possible to have recourse to the procedure in the preceding section.

TITLE IV

Evaluation of the compliance of equipment and apparatus

Article 56. *Technical standardisation.*

1. The cases in which and the conditions on which operators of public networks and publicly available electronic communications services must publish the precise, appropriate technical specifications of the interfaces offered in Spain, prior to the possibility of public access to the services provided by means of said interfaces, may be established in a Royal Decree.

2. The methods for drawing up, where appropriate, the technical specifications applicable to telecommunications equipment and apparatus shall be determined in a Royal Decree, for the purposes of ensuring compliance with the essential requirements in the procedures for assessing compliance and the equipment and apparatus that are exempted from the application of said assessment.

3. In the cases provided for in the law, the Ministry of Industry, Energy and Tourism may approve technical specifications different from those given above for telecommunications apparatus.

Article 57. *Evaluation of compliance.*

1. Telecommunications apparatus, which is understood to be any device not expressly included in the Royal Decree implementing this Title that is radio equipment or telecommunications terminal equipment, or both things at the same time, must have their compliance with the essential requirements contained in the provisions that set them evaluated, comply with all the provisions that are established and bear the corresponding marking as a result of the evaluation made. The use of

equipment that is determined in a Royal Decree, such as amateur radio equipment built by its user and not available on the market, pursuant to the specific regulation, may be exempted from the application of the provisions of this Title.

2. In order to import from third countries that do not belong to the European Union, place on the market, commission or use an item of telecommunications apparatus among those listed in the preceding section, an indispensable requirement shall be that the agent established in the European Union or the user of said apparatus has previously verified that the apparatus complies with the essential requirements applicable to it by means of such procedures as are laid down in the Royal Decree established to this effect, as well as compliance with the provisions of said Royal Decree.

3. Compliance with all the requirements laid down in the aforementioned Royal Decree includes authorisation for the connection of apparatus intended to be connected to the termination points of a public electronic communications network. Said compliance shall not imply authorisation for the use of radio equipment subject to obtaining a permit or concession for the use of the public airwaves as laid down in this Law.

4. The Ministry of Industry, Energy and Tourism may promote supplementary procedures for the voluntary certification of telecommunications apparatus that shall include, at least, an evaluation of the compliance indicated in the preceding chapters.

5. The Ministry of Industry, Energy and Tourism may perform appropriate checks to ensure that equipment placed on the market has had its compliance evaluated pursuant to this Title. The natural or legal person responsible for equipment placed on the market shall make the equipment available free of charge so that said checks can be performed.

The procedure applicable to the removal from the market of products that do not comply with the provisions in this Title shall be established in a Royal Decree.

Article 58. *Mutual recognition.*

1. Telecommunications devices that have had their compliance with the essential requirements evaluated in another Member state of the European Union or by virtue of mutual recognition agreements signed by the Union with third countries, and that comply with other applicable provisions on this subject, shall have the same consideration, under the provisions in Title IV, as apparatus the compliance of which has been checked in Spain and that also meets the other relevant legal provisions.

2. The Ministry of Industry, Energy and Tourism shall establish procedures for recognising the compliance of telecommunications apparatus referred to in the mutual recognition agreements that the European Union establishes with third countries.

3. Telecommunications apparatus that uses the radio spectrum with radio parameters not harmonised in the European Union may not be placed on the market until it has been authorised by the Ministry of Industry, Energy and Tourism, as well as having its compliance with the regulations that are applicable to it and the other provisions that may be applicable to it evaluated.

Article 59. *Conditions to be met by installations and installers.*

1. The installation of telecommunications apparatus must be performed in accordance with the instructions given by the economic agent, in all cases keeping the conditions on which its compliance with the essential requirements was checked unaltered, in the terms laid down in the preceding Articles of this Title.

2. The provision to third parties of the installation or maintenance of telecommunications equipment or systems shall take place under a system of free competition, with no limitations other than those established in this Law and its implementing regulations.

Telecommunications equipment or system installation or maintenance services may be provided to third parties by natural or legal persons from a Member State of the European Union or of another

nationality, when, in the second case, this is provided for in the international agreements binding the Kingdom of Spain. For all other natural or legal persons, the Government may authorise exceptions of a general or particular nature to the above-mentioned rule.

The requirements for carrying out the activity consisting of providing telecommunications equipment or system installation or maintenance services to third parties that are associated with the technical capacity and professional qualifications to perform the activity, technical resources and minimum insurance coverage, surety or any other financial guarantee shall be set out in a Royal Decree. The requirements for entry to the activity and engaging in it shall be proportionate, non-discriminatory, transparent and objective and they shall be clearly and directly linked to the specific general interest that justifies them.

Those interested in providing telecommunications equipment or system installation or maintenance services to third parties must, prior to the start of activities, submit to the telecommunications installer company registry, by electronic or telematic means, a formal statement on compliance with the requirements for engaging in the activity.

The formal statement gives the right to the provision of telecommunications equipment or system installation or maintenance services to third parties throughout Spain for an indefinite period of time.

When a breach is found of any of the requirements in the regulations, the party concerned shall be sent a notification to correct said breach within fifteen days. Should this period elapse without the correction occurring, a ruling shall be issued rendering the formal statement null and void and cancelling the registration with the registry.

Any event that leads to the alteration of any of the information included in the original statement must be reported by the interested party by electronic or telematic means, within one month of its occurrence, to the office of the Secretary of State for Telecommunications and the Information Society, which will then record the change in the telecommunications installer companies register.

If, as a result of the provision of telecommunications equipment or system installation or maintenance services, the security of individuals or public telecommunications networks is placed in danger, the office of the Secretary of State for Telecommunications and the Information Society may issue a reasoned ruling in which, after hearing the interested party, as an intermediate, precautionary measure required for the time necessary, engagement in the activity by the interested party is suspended, without prejudice to disciplinary proceedings being initiated pursuant to Title VIII.

There shall be no restrictions on the temporary or occasional provision in Spain of telecommunications equipment or system installation or maintenance services by natural or legal persons legally established in other member states of the European Union to engage in the same activity, without prejudice to compliance with the obligations with regard to the recognition of professional qualifications applicable to professionals who move.

3. The Register of telecommunications installer companies shall be public and it shall be regulated in a Royal Decree. In it the details of the natural or legal persons that have stated their intention of providing telecommunications equipment or system installation or maintenance services and any modifications shall be recorded, based on the information contained in the statements. The formalities of being registered in the register must not cause a delay in approval to engage in the activity.

TITLE V

The public airwaves

Article 60. *On the administration of the public airwaves*

1. The radio spectrum is an asset in the public domain, the ownership and administration of which corresponds to the State. Said administration shall be exercised pursuant to this Title and the treaties and international agreements to which Spain is a party, in accordance with the regulations applicable in the European Union and the decisions and recommendations of the International

Telecommunications Union and other international bodies.

2. The administration of the public airwaves shall be performed bearing in mind its significant social, cultural and economic value and the necessary cooperation between member states of the European Union and the European Commission in the strategic planning, coordination and harmonisation of the use of the radio spectrum in the European Union.

As part of said cooperation, the coordination of political approaches to the radio spectrum in the European Union shall be fostered and, when appropriate, the harmonisation of the necessary conditions for the creation and functioning of the single electronic communications market. To this end, among other aspects to be taken into account are the economic, security, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of European Union policies, as well as the various interests of the communities of spectrum users, always paying attention to the need to ensure the efficient and effective use of radio frequencies and the benefits for consumers, such as economies of scale and the interoperability of services.

3. In particular, the following principles, among others, are applicable to the administration of the public airwaves:

- a) To ensure the efficient and effective use of this resource
- b) To promote technological and service neutrality, and the secondary spectrum market.
- c) To promote greater competition in the electronic communications market.

4. The purpose of the administration of the public airwaves is to establish a legal framework that ensures harmonised conditions of use, availability and efficient use, and to cover a range of actions including the following:

- a) Planning: Preparation and approval of usage plans.
- b) Management: Establishment, in accordance with advance planning, of the technical operating conditions and the granting of usage rights.
- c) Control: Technical monitoring of transmissions, detection and elimination of interference, technical inspection of radio installations, radio equipment and apparatus, as well as monitoring the marketing of the latter.

Similarly, it includes the protection of the public airwaves, which consists, among other actions, in making transmissions without substantive content on the radio frequencies and channels for which usage rights have not been granted in the corresponding area of the country, regardless of the fact that said radio frequencies or channels are in practice occupied or in effective use.

- d) Application of the penalty scheme.

5. The use of radio frequencies by satellite networks is included in the administration of the public airwaves.

The use of the public airwaves required for the use of orbit/spectrum resources within the scope of Spanish sovereignty and by communications satellites is reserved to the State. Its exploitation is subject to international law and shall be carried out in the manner determined in a Royal Decree, by its direct management by the State or through a concession. In any case, the management may be carried out by means of agreements with international bodies.

Article 61. *Government powers for the administration of the public airwaves.*

The Government shall establish the conditions for the proper administration of the public airwaves in a Royal Decree. In said Royal Decree at least the following shall be regulated:

- a) The procedure for drawing up the radio spectrum usage plans, which include the National Frequency Allocation Table, the national radio and television technical plans, whose approval shall

correspond to the Government, and the radio spectrum needed for national defence. Information on this last subject shall be classified.

b) The procedure for determining, monitoring and inspecting individual tolerable radio wave emission levels that do not pose a danger to public health, which must be respected in all cases and at all times by the different installations or infrastructure to be installed or already installed that make use of the public airwaves. To determine these unique levels of acceptable radio wave emissions both technical criteria for the use of the public airwaves and criteria for preserving the health of individuals pursuant to the recommendations of the European Commission shall be taken into account. Such limits must be respected, in all cases, by the other public administrations, both Autonomous Community and local.

c) The procedures, time frames and conditions for qualifying to exercise the usage rights to the public airwaves, which shall take the form of a general authorisation, individual authorisation, or administrative expropriation or concession.

In particular, open processes for granting rights to use the public airwaves, which shall be based on objective, transparent, non-discriminatory and proportionate criteria and shall take into account, among other circumstances, the technology used, the interest of the services, the bands and their degree of use. The economic value for the interested party of the use of the public domain shall also be taken into consideration, since this is a scarce resource, as will bids submitted by the bidders if applicable.

Notwithstanding the above, when it is necessary to grant individual rights for the use of radio frequencies to radio or television content service providers so as to achieve an objective of general interest established in accordance with European Union Law, exceptions to the open process may be established.

d) The procedure for reassigning the use of frequency bands with the aim of achieving more efficient use of the radio spectrum, depending on their suitability for providing new services or evaluating technologies, which may include the calendar of activities and an evaluation of the associated costs, in particular those incurred by the holders of usage rights affected by these reassignment actions, which may be compensated from an economic fund or such other compensation mechanism as may be set up.

e) Non-discriminatory, proportionate and transparent conditions associated with licences for the use of the public airwaves, among which are included those needed to ensure the effective and efficient use of the frequencies and the commitments made by the operators in the tendering processes provided for in Article 63. These conditions shall seek to promote in all cases the attainment of the greatest benefits possible for users, as well as to maintain sufficient incentives for investment and innovation.

f) The conditions for granting licences for the use of the public airwaves for experimental purposes or for short-term events.

g) The proper use of the radio spectrum through the use of equipment and apparatus.

Article 62. *Licences for the use of the public airwaves.*

1. The use of the public airwaves may be common, special or private.

The common use of the public airwaves shall not require any licence and shall use the frequency bands and the technical characteristics set for that purpose.

The special use of the public airwaves is that carried out on the frequency bands licensed for shared use, with no limitation on the number of operators or users and with the technical conditions and for the services established in each case.

The private use of the public airwaves is that carried out by the sole operation or by a limited number of users of certain frequencies in the same physical area of application.

2. The licences by means of which usage rights to the public airwaves are granted shall take the form of a general authorisation, individual authorisation, or administrative assignment or

concession. The period for the granting of licences shall be six weeks from the entry of the application in any of the registers of the competent administrative body, without prejudice to the terms laid down for usage rights with a limitation on numbers. Said period shall not apply when international coordination of frequencies is necessary or reserved orbital positions are affected.

3. The granting of usage rights to the public airwaves shall take the form of a general licence in the cases of special use of the frequency bands authorised for this purpose over public electronic communications networks installed or operated by electronic communications operators.

A general licence shall be understood to be granted with no formalities other than a notification to the office of the Secretary of State for Telecommunications and the Information Society, using the procedure and the requirements established in an order of the Ministry of Industry, Energy and Tourism, without prejudice to the obligation to pay the corresponding taxes. When the office of the Secretary of State finds that the notification does not meet the aforementioned requirements, it shall issue a reasoned decision within 15 days and the notification shall be deemed not to have been made..

4. The granting of usage rights to the radio spectrum shall take the form of an individual licence in the following cases:

a) If there is a reserved right of special use by amateur radio enthusiasts or others with no economic content in the specific regulation in which this is established.

b) If the right to private use is granted for self-provision by the applicant, except in the case of the public administrations, which shall require an allocation of the public domain.

5. In all other cases not included in the preceding sections, the right to the private use of the public airwaves shall require an administrative concession. To be awarded this concession, as a prior requirement the applicants must have the status of an electronic communications operator and not have been subject to any other contracting prohibitions in the revised text of the Public Sector Contracts Act, approved by Royal Legislative Decree 3/2011 of 14 November.

Concessions for the private use of the public airwaves reserved for providing audiovisual services shall be awarded by the office of the Secretary of State for Telecommunications and the Information Society separately from the audiovisual licence. The duration of these concessions shall be that of the audiovisual licence. In these cases, the operator awarded the concession does not need to have the status of an electronic communications operator but must have that of an audiovisual services provider.

6. The awarding of licences is the responsibility of the office of the Secretary of State for Telecommunications and the Information Society except in cases where one is granted through the tendering process provided for in Article 63.

The decisions by which public airwaves concessions are awarded shall be issued in the manner and within the periods established in a Royal Decree, which shall also lay down the information that must be made public regarding said concessions.

7. Those selected to provide harmonised electronic communications services put out to tender by European Union institutions where usage rights to the public airwaves are reserved in their favour shall be automatically recorded in the Register of Operators. The office of the Secretary of State for Telecommunications and the Information Society shall award the public domain concession to the above-mentioned operators. The aforementioned concessions shall include, among others, the appropriate conditions established in the tendering processes, as well as the commitments taken on by the operator in said process.

8. In the National Frequency Allocation Table or in the specifications governing the tendering processes for the granting of licences precautions may be established to prevent speculative behaviour or the hoarding of usage rights to the public airwaves, especially by setting limits on the number of frequencies to be used by one operator or group of companies or setting strict deadlines for the holder's making use of the usage rights. To this end, the Ministry of Industry, Energy and

Tourism may adopt measures such as ordering the sale or transfer of usage rights to radio frequencies. These precautions shall be laid down and applied so that they are proportionate, non-discriminatory and transparent.

9. Prior to the use of the public airwaves, the approval of the technical project and the inspection or favourable examination of the installations by the office of the Secretary of State for Telecommunications and the Information Society shall be mandatory, with the aim of ascertaining that they meet the conditions previously authorised.

Depending on the nature of the service, the frequency band used, the technical complexity of the installations used, or for reasons of efficient spectrum management, the approval of the technical project may be replaced by a formal statement pursuant to Article 71 bis of Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, without prejudice to the office of the Secretary of State for Telecommunications and the Information Society's being able at any time to require the submission of the technical project. The prior inspection may also be replaced by a certificate issued by a competent technician.

10. Operators of electronic communications networks or services that make use of the public airwaves must have the respective licence for said use.

Operators intending to make significant volumes of radio transmissions using the public airwaves on behalf of other persons or entities must verify, prior to the start of said transmissions, that the entities to which they intend to make their network available have the corresponding licence for the use of the public airwaves. Said operators may not put their network at the disposal of the aforementioned entities and, as a result, may not give access to their network to said entities nor may they make the above-mentioned transmissions should the aforementioned licence be lacking.

Article 63. *Licences granted through a tendering process.*

1. When it is necessary to ensure the effective and efficient use of the radio spectrum, duly taking into account the need to gain the maximum benefits for the users and facilitate the development of competition, the Ministry of Industry, Energy and Tourism may, after hearing the interested parties, including consumer and user associations, limit the number of public domain concessions granted for said domain for the operation of public networks and the provision of electronic communications services. Any decision to limit the granting of usage rights must be published, explaining the reasons for this decision. The limitation on the number of licences shall be revisable by the Ministry itself, ex officio, or at the request of a party, to the extent that the reasons for which it was imposed cease to apply.

2. When, pursuant to the preceding section, the Minister of Industry, Energy and Tourism limits the number of public domain concessions to be granted for a certain frequency band, a tendering process shall be carried out for the granting of these concessions that shall in all cases respect the principles of openness, competition and non-discrimination for all interested parties. To do so, the call to tender and the specifications governing the tender shall be approved in an order from the Minister of Industry, Energy and Tourism.

The results of the tendering process must be decided in an order from the Minister of Industry, Energy and Tourism within eight months of the call to tender.

Article 64. *Duration, modification, expiry and revocation of licences for use of the public airwaves.*

1. The rights of private use of the public airwaves with no limitation on their number shall generally be granted for a period that shall end on 31 December of the calendar year in which they reach their fifth year of validity and they shall be renewable for periods of five years depending on the availability and the forecasts in the plans for said public domain. The cases in which a different duration may be set for rights of private use of the public airwaves with no limitations of their number

shall be determined in a Royal Decree.

2. Rights of exclusive use with a limitation on their number shall have the duration set forth in the respective tendering processes and, in all cases, this shall be a maximum of twenty years, including possible extensions and with no possibility of automatic renewal. At the time of setting the specific duration for usage rights in the tendering procedure, among other criteria, the investment required and the time frames for its depreciation, the obligations linked with the usage rights, such as the minimum coverage that is imposed, and the frequency bands for which the usage rights are granted, shall be taken into account, in the terms laid down in a Royal Decree.

3. Based on the principles of objectivity and proportionality and paying attention firstly to the needs of scheduling and the efficient use and availability of the radio spectrum, in the terms laid down in a Royal Decree, the Ministry of Industry, Energy and Tourism may modify the licences for the use of the public airwaves, after hearing the interested party.

When the licences have been granted through a tendering process, a prior report from the National Authority on Markets and Competition shall also be required, as shall a hearing of the Consumers' and Users' Council and, where appropriate, the most representative associations of the other users during a sufficient period of time, which, except in exceptional circumstances, may not be less than four weeks. In these cases, the change shall be made by means of ministerial order, with a prior report from the government's Executive Committee for Economic Affairs, which shall set a deadline for the holders to adapt to the change.

The change to licences for the use of the public airwaves may, in the cases in which conditions must justifiably be set that differ from those existing when the licence was granted, may consist of extending the duration of existing rights, including beyond the durations laid down in the preceding sections.

4. Licences for the use of the public domain shall expire due to:

- a) Such causes as may apply from among those listed in Article 100 of Law 33/2003 of 3 November on the Assets of the Public Administrations.
- b) The death of the holder of the usage right to the public airwaves or the termination of the legal person that is the holder.
- c) Its relinquishment by the holder, effective from its acceptance by the competent body of the Ministry of Industry, Energy and Tourism.
- d) The loss of the status of operator by the holder of the usage right to the public airwaves, when this status was necessary, or any cause that renders the holder unable to provide the service.
- e) Failure to pay the radio spectrum reservation taxes.
- f) The network's failure to meet the technical characteristics in the National Frequency Allocation Table, without there being a possibility of granting the holder other wave bands.
- g) A mutual agreement between the holder and the competent body of the Ministry of Industry, Energy and Tourism.
- h) The elapsing of the time for which they were granted. In the case of usage rights with no limitations on their number, due to the elapsing of the time for which they were granted without their renewal taking place.
- i) Due to serious, repeated contraventions by the holder of obligations that are considered to be a cause of revocation.
- j) Any other causes that are set forth in the licence, pursuant to this Law.

5. By means of the general administrative procedure in Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, the competent body of the Ministry of Industry, Energy and Tourism may approve the revocation of licences for the use of the public airwaves for the following causes:

- a) Failure to comply with the conditions and technical requirements applicable to the use of the

public airwaves.

- b) Not paying the Asset Transfers and Documented Legal Acts Tax.
- c) Not making effective and efficient use of the public airwaves.
- d) The successive revocation of two administrative authorisations to transfer a licence or cede usage rights to the public airwaves for the same licence within a period of one year.
- e) The use of the frequencies for purposes other than those for which they were allocated or for purposes other than those of providing the service or engaging in the activity for which they were allocated.

Article 65. *Active protection of the public airwaves*

1. The office of the Secretary of State for Telecommunications and the Information Society may, at any time, effect active protection of the public airwaves by making transmissions with no substantive content on the radio frequencies and channels for which usage rights have not been granted in that corresponding area of the country.

This power shall be exercised without prejudice to such actions of inspection and sanctioning as may be carried out to discharge any liabilities that might have been incurred due to the unlicensed use of the public airwaves, the production of harmful interference or the committing of any other contravention classified within the framework of the sanctions system set forth in Title VIII of this Law.

2. The procedure for the exercise of the power of active protection of the public airwaves shall be regulated in a Royal Decree when the radio frequency or channel is the object of unlicensed occupation or effective use, subject to the following rules:

- a) The occupation or effective use of a radio frequency or channel without there being a licence for this shall be proven.
- b) A prior hearing shall be held within ten working days for the natural or legal person that is occupying or making effective use of the radio frequency or channel without a licence or, where appropriate, the owner of the infrastructure, the property or the building from which the transmission on that frequency is produced to present such arguments as he deems appropriate.
- c) Where appropriate, after the holding of the prior hearing, the above-mentioned person or owner in respect of whom the procedure was carried out shall be required to cease the unauthorised transmissions within eight working days.
- d) Should he not then cease the unauthorised transmissions, the office of the Secretary of State for Telecommunications and the Information Society may start its broadcasts on said radio frequency or channel.

Article 66. *Technological and service neutrality in the use of the public airwaves.*

1. Any type of technology used for electronic communications services pursuant to European Union Law may be used on the radio frequency bands declared available in the National Frequency Allocation Table.

However, proportionate and non-discriminatory restrictions may be placed on the types of wireless access or radio network technologies used for electronic communications services when it is necessary to:

- a) Prevent harmful interference.
- b) Protect the health of the public from electromagnetic fields.
- c) Ensure the technical quality of the service.
- d) Ensure maximum shared use of the radio frequencies.
- e) Ensure effective use of the spectrum.

f) Ensure the attainment of a general interest objective.

2. Any type of electronic communications services may be provided on the radio frequency bands declared available for electronic communications services in the National Frequency Allocation Table, in accordance with European Union Law.

However, proportionate and non-discriminatory restrictions may be placed on the types of electronic communications services provided, including, where appropriate, complying with a requirement in the International Telecommunications Union Radio Regulations.

Measures that require an electronic communications service to be provided on a specific band available for electronic communications services must be justified so as to ensure the attainment of general interest objectives defined in accordance with European Union Law, such as:

- a) Safety of life.
- b) The promotion of social, regional or territorial cohesion.
- c) The prevention of the inefficient use of radio frequencies.
- d) The promotion of cultural and linguistic diversity and communications media pluralism, for example by providing radio and television services.

The specific allocation of a frequency band for a certain electronic communications service shall be imposed only when this is justified by the need to protect services related to the safety of life or, as an exception, when it is necessary to attain general interest objectives defined in European Union Law.

3. The restrictions on the use of frequency bands that, where appropriate, are established in accordance with the preceding sections may be adopted only after giving the interested parties the opportunity to comment on the proposed measure, within a reasonable time.

4. Periodically, the office of the Secretary of State for Telecommunications and the Information Society shall review the relevance of continuing the restrictions on the use of frequency bands that, where appropriate, are established pursuant to the preceding sections, shall publicise the results of these reviews and shall submit the corresponding proposals to the competent body for approval.

Article 67. *Secondary market in the public airwaves.*

1. Licences for the use of the public airwaves may be transferred and usage rights to the public airwaves may be ceded, whether partially or as a whole, on the conditions for authorisation laid down in a Royal Decree.

In said Royal Decree, the frequency bands on which licence transfer operations or the cession of right of use of the public airwaves may take place shall also be identified, especially the frequency bands that, where appropriate, are identified at the European Union level.

2. In the event of total or partial cession, this shall in no case exempt the holder of the usage right that is being ceded from the obligations assumed with the Administration. Any transfer of a licence or cession of usage rights to the public airwaves must in all cases respect the technical conditions of use laid down in the National Frequency Allocation Table or in the technical plans or the conditions that, where appropriate, have been set in the applicable European Union technical measures.

3. Restrictions on the transfer or leasing of individual usage rights to radio frequencies shall be established in a Royal Decree when said rights were initially obtained free of charge.

TITLE VI

The administration of telecommunications.

Article 68. *Powers of the General State Administration and its public agencies.*

1. The National Telecommunications Regulation Authority shall be considered to consist of:

- a) The Government.
- b) The senior and governing bodies of the Ministry of Industry, Energy and Tourism that, in accordance with the organisational structure of the department, assume the powers assigned to that ministry over matters regulated by this Law.
- c) The senior and governing bodies of the Ministry of Economy and Competitiveness that, in accordance with the organisational structure of the department, assume the powers assigned to that ministry over matters regulated by this Law.
- d) The National Authority on Markets and Competition when exercising the powers assigned to it over matters regulated by this Law.

2. In the development of the powers that have been entrusted to them, the national regulation authorities referred to in section 1 shall cooperate with each other, with the other controlling bodies of other States and with the relevant bodies of the European Union, in order to promote the consistent application of Community regulations on electronic communications and contribute to the development of the single market. To this end, they shall actively support the objectives of the Commission and the Body of European Regulators for Electronic Communications (BEREC) of fostering greater coordination. They shall also cooperate with both institutions in order to determine what types of instruments and solutions are the most suitable for handling particular market situations.

3. In the development of the powers entrusted to the national regulation authorities referred to in section 1, they shall apply objective, transparent, non-discriminatory and proportionate regulatory principles, in accordance with the following aims and criteria:

- a) To promote a predictable regulatory environment, ensuring a consistent regulatory approach with appropriate review periods.
- b) To foster efficient, market- and innovation-oriented investment in new and improved infrastructure, including ensuring that all access-related obligations duly take into account the risks incurred by investor companies, and to permit different types of cooperation between investors and the parties that are requesting access, so as to diversify the risk of investment and ensure that market competition and the principle of non-discrimination are respected.
- c) To impose specific obligations only when there is no effective, sustainable competition, and remove said obligations when said condition is shown to be fulfilled.
- d) To ensure that, in similar circumstances, no discriminatory treatment is given to companies that are suppliers of electronic communications networks and services.
- e) To safeguard competition for the benefit of consumers and users and to promote, when possible, infrastructure-based competition.
- f) To take into due account the varied conditions existing in the different geographical regions in terms of competition and consumers.
- g) To exercise their responsibilities in such a way as to promote efficiency, sustainable competition and the maximum benefit for end-users.

Article 69. *Ministry of Industry, Energy and Tourism.*

The senior and governing bodies of the Ministry of Industry, Energy and Tourism that, in accordance with the organisational structure of the department, assume the powers assigned to that ministry shall carry out the following functions.

- a) Execute the policy adopted by the Government for the national defence and civil defence

telecommunications services referred to in Article 4 of this Law.

b) Manage the Register of Operators.
c) Exercise the powers over access to networks and associated resources, interoperability and interconnection assigned to them in this Law and its implementing regulations, especially in the following cases:

1. In bidding processes to obtain usage rights to the public airwaves.
2. When it is necessary to ensure compliance with the legislation on personal information and the protection of privacy in the electronic communications sector.
3. When it is necessary to ensure compliance with international commitments in the area of telecommunications.

d) Propose to the Government the approval of national numbering, routing and naming plans, the granting of usage rights to public resources in these plans and exercise the other powers assigned to it in Title II, Chapter V of this Law.

e) Propose to the Government the policy to be followed to facilitate the development and evolution of the public service obligations referred to in Title III, Chapter I and implement this policy by assuming the power to control and monitor the public service obligations that correspond to the various operators when operating networks or providing electronic communications services.

f) Propose to the Government the policy to be followed to recognise and guarantee public rights and obligations in the operation of networks and provision of electronic communications services and the rights of end-users referred to in Title III, Chapters II, III and V.

g) To manage the Register of telecommunications installation companies.

h) To formulate proposals for the drawing up of legislation regarding the common electronic communications infrastructure in the interior of buildings and building complexes, and monitor their implementation in Spain.

i) To carry out the duties in regard to the evaluation of the compliance of equipment and apparatus referred to in Title IV.

j) To carry out the duties in regard to the administration of the public airwaves referred to in Title V. In particular, it shall carry out the following duties:

1. Propose the plan for and manage and control the public airwaves and process and grant the licences for its use.

2. Exercise the duties assigned to the General State Administration in regard to the authorisation and inspection of radio installations in relation to the individual levels of radio emissions referred to in Article 61 of this Law.

3. Manage a public register of radio frequencies, accessible over the Internet, in which the holders of administrative concessions for the private use of the public airwaves shall be recorded.

4. Draw up projects and develop national technical plans for radio and television.

5. Monitor radio emissions to identify, locate and eliminate harmful interference, breaches, irregularities and disturbances of radio communications systems and check the effective and efficient use of the public airwaves by the holders of usage rights.

6. Protect the public airwaves, for which it may, among other actions, make transmissions on the radio frequencies and channels for which, in the corresponding area of the country, usage rights have not been granted.

7. Manage the allocation of orbital-spectrum resources for satellite communications.

8. Draw up studies and reports, and in general, advise the General State Administration on all matters relating to the administration of the public airwaves.

9. Participate in international organisations concerned with radio spectrum planning.

k) Manage the telecommunications taxes referred to in this Law during the voluntary period.

l) Carry out the duties of management, settlement, inspection and collection during the voluntary period of the contributions to be made by telecommunications operators and private televised audiovisual communication service providers, at the national geographical level or a level higher than an Autonomous Community, regulated in Articles 5 and 6 of Law 8/2009 of 28 August on funding for the Spanish Radio and Television Corporation.

m) Carry out the duties assigned expressly by Community regulations, this Law and its implementing regulations.

n) Carry out any other duties that are assigned to it by law or Royal Decree.

Article 70. *The National Authority on Markets and Competition.*

1. The nature, duties, structure, personnel, budget and other matters concerning the National Authority on Markets and Competition are regulated by the Law creating the National Authority on Markets and Competition.

2. In particular, on matters regulated in this present Law, the National Authority on Markets and Competition shall have the following functions:

a) Define and analyse the electronic communications network and service reference market, which shall include the corresponding wholesale and retail markets, and the geographical scope of these markets, the characteristics of which may justify the imposition of specific obligations in the terms laid down in Article 13 of this Law and its implementing regulations.

b) Identify the operator or operators that have significant market power when it is shown in the reference market analysis that they are not developing in an effective competitive environment.

c) Establish, when appropriate, the specific obligations that correspond to the operators with significant power in the reference markets, in the terms laid down in Article 14 of this Law and its implementing regulations.

d) Resolve conflicts in the electronic communications markets referred to in Article 15 of this Law.

In particular, it shall be responsible for resolving conflicts between operators regarding the determination of the specific conditions for implementing the obligation imposed by the Ministry of Industry, Energy and Tourism regarding the shared use of the public domain or private property, or the shared location of infrastructure and associated resources, in accordance with the procedure regulated in Article 32 of this Law. It shall also resolve conflicts concerning access to infrastructure capable of accommodating public electronic communications networks and access to electronic communications networks owned by the bodies or entities managing state transport infrastructure, in the terms laid down in Articles 37 and 38 of this Law.

e) Decide to impose, as an exceptional measure, the obligation of functional separation on vertically integrated operators with significant market power in accordance with the requirements and procedures in Article 16 of this Law.

f) Set the characteristics and conditions for number retention in application of the technical and administrative aspects to be set out in a Royal Decree so that this process can take place.

g) Intervene in relationships between operators or between operators and other entities that benefit from the obligations of access and interconnection, with the aim of fostering and, where appropriate, ensuring the suitability of the access, interconnection and service interoperability, in the terms laid down in Article 12 of this Law and its implementing regulations.

h) Determine the amount of the net cost of providing the universal service, referred to in Article 27 of this Law.

i) Define and review the methodology for determining the net cost of the universal service, both in regard to cost allocation and revenue assignment, which must be based on objective, transparent, non-discriminatory and proportionate procedures and criteria and be public.

j) Set up the procedure for quantifying the non-monetary benefits obtained by the operator or

operators responsible for providing the universal service..

k) Decide to impose obligations on the operators that have application programming interfaces (API) and electronic programming guides (EPG) to facilitate access to these resources insofar as necessary to ensure end-user access to certain digital radio and television services.

l) Be consulted by the Government and the Ministry of Industry, Energy and Tourism in regard to electronic communications, especially on matters that could affect the free and competitive development of the market. It may also be consulted on matters of electronic communications by the Autonomous Communities and local corporations.

In exercising this function it shall participate, by means of a report, in the process of drafting legislation that affects its powers over electronic communications.

m) Carry out the duties of arbitration, both *de jure* and *ex aequo et bono*, of cases submitted to it by the electronic communications operators in application of Law 60/2003 of 23 December on Arbitration.

n) Carry out the duties assigned expressly by Community regulations, this Law and its implementing regulations.

o) Carry out any other duties that are assigned to it by law or Royal Decree.

TITLE VII

telecommunications taxes.

Article 71. *Telecommunications taxes.*

1. The telecommunications taxes managed by the General State Administration shall be those shown in Appendix I to this Law.

2. The purpose of said taxes shall be to:

a) Cover administrative expenses occasioned by the regulatory work relating to the preparation and implementation of Community law and administrative acts, such as those relating to interconnection and access.

b) Those occasioned by the management, control and execution of the system laid down in this Law.

c) Those occasioned by the management, control and execution of rights of occupation of the public domain, usage rights to the public airwaves and numbering.

d) The management of the notifications regulated in Article 6 of this Law.

e) Expenses for international cooperation, harmonisation and standardisation and market analysis.

3. Without prejudice to the provisions in section 2, the purpose of the taxes established for the use of the public airwaves, numbering and the public domain required for the installation of electronic communications networks shall be the necessary assurance of the optimum use of these resources, taking into account the value of the asset for which the use is granted and its scarcity. Said taxes must be non-discriminatory, transparent, objectively justified and proportionate to their purpose. They must also promote compliance with the objectives and principles laid down in Article 3, in the terms set forth in a Royal Decree.

4. The taxes referred to in the preceding sections shall be imposed objectively, transparently and proportionately, so that the additional administrative costs and the burdens arising from them are minimised.

5. The review, through administrative channels, of the acts for the application, management and collection of the telecommunications taxes must be subject to the provisions in Article 22.3 of Law 8/1989 of 13 April on Public Levies and Prices.

6. In regard to the taxes referred to in section 1, the Ministry of Industry, Energy and Tourism

and the competent administrations that manage and settle taxes that come under section 2 of this Article shall publish an annual summary of the administrative expenses that justify their being imposed and the total amount collected. The competent administrations that manage and settle taxes that come under section 3 of this Article shall publish annually the total amount collected from the electronic communications network and service operators.

TITLE VIII

Inspection and sanctions scheme.

Article 72. *Inspection duties*

1. The duty of inspection of telecommunications matters shall correspond to:
 - a) The Ministry of Industry, Energy and Tourism.
 - b) The National Authority on Markets and Competition.
2. The Ministry of Industry, Energy and Tourism shall have the powers to inspect the following:
 - a) Electronic communications services and networks and the conditions on which they are provided and operated.
 - b) Equipment and apparatus, installations and civilian systems.
 - c) The public airwaves.
 - d) Services with additional rates that are conveyed through electronic communications networks and services.
3. It shall correspond to the National Authority on Markets and Competition, in the terms laid down in the Law on the creation of said Authority, to inspect the activities of telecommunications operators over which it has sanctioning powers pursuant to said Law.
4. For performing certain technical inspection activities included in its powers pursuant to this Law, the National Authority on Markets and Competition may request action by the Ministry of Industry, Energy and Tourism.

Article 73. *Powers of inspection.*

1. Officials from the office of the Secretary of State for Telecommunications and the Information Society of the Ministry of Industry, Energy and Tourism shall be considered, when exercising their duties of inspection regarding telecommunications, to be a public authority and may, through the appropriate government authority, request any assistance that may be necessary from the police.
2. Operators or anyone performing the activities referred to in this law shall be obliged to provide the inspection personnel with access to their installations, when the latter are carrying out their duties. They must also permit said personnel to perform an audit of the elements relating to the services or activities being performed, the networks that they install or operate and any documents that they are obliged to hold or retain.

The owners of property or real estate on which equipment, stations or any type of telecommunications installations are located shall have the obligation to permit access to said property by the inspection personnel referred to in this Article. For these purposes, access by the inspection personnel to the aforementioned property or real estate shall require the consent of said owners or a court order only when it is necessary to enter a constitutionally protected residence or to search it. The Administrative Litigation courts shall rule on the granting of the court order within a maximum of 72 hours.
3. Operators or anyone performing the activities referred to in this Law are obliged to place at

the disposition of the inspection personnel any books, records and documents, irrespective of their format, and technical media that the latter consider necessary, including computer programs and magnetic or optical files or files of any other type.

They must also provide them, at their request, with any type of documentation that the inspection personnel require from them to decide the ownership of the equipment or the provenance of the emissions or activities.

4. The obligations laid down in the preceding two sections shall be required of the operators or anyone performing the activities referred to in this Law and directly responsible for operating the network, providing the service or performing the activity regulated by this Law. These obligations shall also apply to anyone supporting the above-mentioned activities, the owners of the properties or buildings in which telecommunications equipment or installations is located, company associations and directors or other members of their personnel.

5. Operators or anyone performing the activities referred to in this Law are obliged to submit to inspections by officials from the Ministry of Industry, Energy and Tourism. Denying or obstructing access to the installations, property or real estate or failing to provide the information or documentation demanded shall be sanctioned, in accordance with the following Articles under this Title, as obstructing the work of inspection.

6. In particular, the inspection personnel shall have the following powers:

- a) To seal off all premises, installations, equipment, books or documents and other company assets for the time and to the extent required to carry out the inspection .
- b) To make checks, measurements, take photographs, videos and image or sound recordings.

7. The actions of inspection, checking or investigation performed by the Ministry of Industry, Energy and Tourism may be carried out, at its departments' choice:

- a) In any office, workshop or branch of the person or entity inspected or of the person representing them.
- b) On the premises of the Ministry of Industry, Energy and Tourism.
- c) In any office, workshop, branch or place in which there is evidence of the facts that are the object of the inspection.

8. For the purposes of performing the duties provided for in this Article, the inspection personnel of the Ministry of Industry, Energy and Tourism, shall have free access to every public record, in particular the Property and Mercantile Registers. Access to the information in the registers shall be by electronic means, in the manner laid down in the regulations governing said access.

Article 74. *Liability for telecommunications-related contraventions.*

The following shall be held administratively liable for contraventions of telecommunications regulations:

- a) In the event of a contravention of the conditions laid down for operating networks or providing electronic communications services, the natural or legal person engaged in the activity.
- b) When the offence is committed due to the operation of networks or the provision of services without submitting the notification referred to in Article 6 of this Law or without having a licence to use the public airwaves when said licence is required, the natural or legal person engaged in the activity.

To identify the natural or legal person engaged in the activity, cooperation may be requested of the natural or legal person that has had the equipment or installations made available under any legal title valid under the law or, in its absence, the natural or legal person that is the owner of the property or building where the equipment and installations are located. If the aforementioned

cooperation is not given, so that said natural or legal person is essentially a party to the offending behaviour, it shall be considered that said person is responsible for the contraventions committed by whoever is engaged in the activity. This is a joint and several liability with the natural or legal person engaged in the activity.

c) When committed by users, telecommunications installation companies, telecommunications equipment and apparatus-related economic agents that, without being included in the preceding paragraphs, are engaged in activities governed by the telecommunications regulations, the natural or legal person whose actions are categorised in the precept violated or to whom the corresponding rules specifically assign the responsibility.

Article 75. *Classification of contraventions.*

Contraventions of the rules governing telecommunications are classified as very serious, serious and minor.

Article 76. *Very serious contraventions.*

The following are considered very serious contraventions:

1. Being engaged in activities without having the appropriate authorisation for matters regulated by this Law, when this is required by the law.
2. Failure to comply with the requirements demanded to operate networks and provide electronic communications services laid down in Article 6.1 and 6.2.
3. Using the public airwaves, radio frequencies or channels without having a concession for the private use of the public airwaves referred to in Article 62, when this is required by law..
4. Using the public airwaves, radio frequencies or channels in a manner that does not match the corresponding radio spectrum use plan or the National Frequency Allocation Table.
5. Making unauthorised radio transmissions that go against or hamper the development or implementation of the provisions in the radio spectrum use plans or the National Frequency Allocation Table.
6. The deliberate production, in Spain or in neighbouring countries, of interference defined as harmful in this Law, including that caused by radio stations that are installed or operating on board a ship, aircraft or any other floating or airborne object that transmits from outside Spanish territory for possible total or partial reception in this country.
7. Not heeding a cease and desist order from the office of the Secretary for Telecommunications and the Information Society, in cases of the production of interference.
8. The installation, commissioning or use of telecommunications terminals or equipment, both those that make use of the public airwaves and those connected, directly or indirectly, to public electronic communications networks the compliance of which has not been evaluated, pursuant to Title IV of this Law, if very serious damage is done to communications or the networks.
9. Importing or selling wholesale equipment or apparatus compliance of which has not been evaluated in accordance with the provisions of Title IV of this Law or with international agreements or conventions signed by the Spanish State.
10. Intercepting, without authorisation, telecommunications not intended for the general public, and divulging the contents.
11. Failure to comply with binding rulings in administrative proceedings or with prior measures or precautionary measures referred to in Articles 81 and 82 of this Law taken by the Ministry of Industry, Energy and Tourism when exercising its functions in regard to electronic communications.
12. Failure to comply with binding rulings in administrative proceedings or with precautionary measures referred to in Article 82 of this Law pronounced by the National Authority on Markets and Competition in the exercise of its functions in regard to electronic communications, with the exception

of those arising from an arbitration process voluntarily submitted to by the parties.

13. Failure to comply with binding rulings in administrative proceedings regarding claims in respect of conflicts between end-users and the operators.

14. The negligent installation of common telecommunications infrastructure in the interior of buildings and building complexes that may cause very serious damage to public electronic communications networks.

15. A very serious contravention by the operators of the obligations regarding access, interconnection and service interoperability to which they are subject pursuant to current legislation.

16. A very serious contravention of the characteristics and conditions established for number retention.

17. Repeated non-compliance stemming from contraventions classified as serious in the terms expressed in Article 79.4 of this Law.

Article 77. *Serious contraventions.*

The following are considered serious contraventions:

1. Installing radio stations without authorisation when required in accordance with the provisions of the regulations governing telecommunications, , or installing radio stations with characteristics other than those authorised or other than those contained in the approved technical project, or radio stations on board a ship, aircraft or any other floating or airborne object that, at sea or otherwise, makes possible the transmission of broadcasts from outside the country for possible total or partial reception inside the national borders.

2. Using the public airwaves otherwise than on the conditions provided for in the licence referred to in Article 62, or, where appropriate, other than those approved in the technical project for the installations. These include using different technical parameters from those in the licence, or different sites from those approved or emission levels higher than those authorised, when this causes alterations that hinder the proper provision of other services by other operators, in Spain or in neighbouring countries.

3. Failure by the holders of concessions for the private use of the public airwaves to comply with the basic conditions imposed on them by the Ministry of Industry, Energy and Tourism.

4. The mere production, in Spain or in neighbouring countries, of interference defined as harmful in this Law that is not included in the preceding Article.

5. Transmitting false or misleading identification signals.

6. Making radio emissions that fail to comply with the exposure limits laid down in the regulations developed from Article 61 of this Law and failing to comply with the other safety measures laid down therein, including the obligations of placing signs or fences around radio installations. In addition, contributing to serious violation of said limits by means of unauthorised emissions.

7. Transferring licences or ceding a right of use of the public airwaves, without complying with the requirements laid down in this regard in the regulations implementing this Law..

8. Failing to comply with the obligations arising from the specifications or certification given by the Telecommunications Administration in regard to evaluating the compliance of telecommunications equipment and apparatus, pursuant to applicable European and Spanish regulations.

9. Installing, putting into service or using terminals or equipment connected to public electronic communications networks compliance of which has not been evaluated pursuant to Title IV of this Law.

10. Selling or offering for sale, whether in establishments or by telematic or telephonic means, equipment or apparatus compliance of which with the applicable basic requirements has not been evaluated in accordance with the provisions in Title IV of this Law or with the international provisions,

agreements or conventions binding on the Spanish state.

11. Refusing to be inspected or obstructing an inspection, not cooperating with the inspection when this is required and failure of the natural or legal person that has possession of the equipment and installations or is the owner of the property or building where the equipment and installations are located to identify the natural or legal person that is operating networks or providing services without having submitted the notification referred to in Article 6 of this Law or without holding the licence for the use of the public airwaves when said licence is required.

12. Engaging in the activity of installing and maintaining telecommunications equipment and systems without having submitted the formal statement or without meeting the requirements referred to in Article 59.

13. The negligent installation of common telecommunications infrastructure in the interior of buildings and building complexes that may cause damage to public electronic communications networks, except when this action is considered a very serious contravention.

14. Altering, tampering with or omitting the telecommunications equipment marking on any of the parts where this must be placed by law; altering equipment documentation or installation manuals; and supplying information for altering the technical characteristics or the operating frequencies of the apparatus.

15. Failure by administration partner organisations to comply with the harmonisation and standardisation of technical specifications and the content of authorisations or agreements that affect them, in accordance with such regulations as may be determined.

16. Refusing to comply with public service obligations pursuant to Title III of this Law and its implementing regulations.

17. Refusing to comply with the conditions for providing services or operating electronic communications networks.

18. Tardy or defective compliance by the operators with binding rulings in administrative proceedings regarding claims in respect of conflicts between end-users and the operators.

19. Failure to comply with the defining conditions for the allocation and granting of usage rights to numbering resources included in the numbering plans.

20. Failure by the operator to comply with the obligations relating to the integrity and security of electronic communications service provision or network operation.

21. Failure by the operators to comply with the obligations laid down for the shared use of the public domain or private property on which public electronic communications networks are going to be set up or the shared use of infrastructure and associated resources.

22. Failure by the operators, or the owners of the corresponding associated resources, to comply with the obligations for the shared use of the final sections of access networks.

23. Failure to comply with the obligations relating to the use of standards or technical specifications declared to be mandatory by the European Commission.

24. Altering, tampering with or omitting technical characteristics from the documentation on common telecommunications installations in the interior of buildings or building complexes submitted to the Administration or to the owners.

25. Failure by operators directly or indirectly controlled by public administrations to comply with the obligations laid down in Article 9.

26. Tardy or defective compliance with binding rulings in administrative proceedings or with prior measures or precautionary measures referred to in Articles 81 and 82 of this Law issued by the Ministry of Industry, Energy and Tourism when exercising its functions in regard to electronic communications.

27. Tardy or defective compliance with binding rulings in administrative proceedings or with precautionary measures referred to in Article 82 of this Law pronounced by the National Authority on Markets and Competition in the exercise of its functions in regard to electronic communications, with the exception of those that arise from an arbitration process voluntarily submitted to by the parties.

28. Failure by operators to comply with the obligations in respect of access, interconnection and

service interoperability to which they are subject pursuant to current legislation.

29. Failure by the owner of an electronic communications network to notify the Administration of the services that are being provided through said network when this information is required pursuant to applicable legislation.

30. Placing public electronic communications at the disposal of entities for them to produce radio transmissions when they do not hold the corresponding licence for the use of the public airwaves.

31. Issuing certificates for telecommunications installations that do not correspond to reality.

32. Deliberate failure on the part of the operators to comply with the obligations in respect of legal interception of communications imposed in the development of Article 39 of this Law.

33. Carrying traffic contrary to national and international numbering plans.

34. Carrying irregular traffic for fraudulent purposes over public networks and publicly available electronic communications services.

35. Not providing, when this is required pursuant to the regulations governing electronic communications, information required by the Administration when three months have passed since the end of the time allotted in the request for information or the period granted in the second request for the same information has ended.

36. Failing to comply with the characteristics and conditions set for number retention.

37. A serious contravention of consumer and end-user rights, pursuant to Title III of this Law and its implementing regulations.

38. Repeated non-compliance stemming from contraventions classified as minor in the terms expressed in Article 79.4 of this Law.

Article 78. *Minor contraventions.*

The following are considered minor contraventions:

1. The production of any type of unauthorised radio emission or that does not fit in with the corresponding radio spectrum use plan, unless it must be considered a serious or very serious contravention.

2. Establishing communications using unauthorised stations.

3. Merely producing interference, in Spain or in neighbouring countries, when this is not considered a serious or very serious contravention.

4. Not providing the data requested by the Administration or unjustifiably delaying their submission when required pursuant to the regulations governing electronic communications.

5. Using the public airwaves, radio frequencies or channels without having a general licence, individual licence or allocation of the public airwaves referred to in Article 62, when this is required by law.

6. Installing amateur radio stations without authorisation.

7. Failure by the holders of general licences, individual licences and public domain concessions for the use of the public airwaves to comply with the basic conditions imposed by the Ministry of Industry, Energy and Tourism.

8. Operating networks or providing electronic communications services without fulfilling the requirements for engaging in such activities laid down in this Law and its implementing regulations, other than those provided for in Articles 6.1 and 6.2.

9. Installing telecommunications infrastructure without fulfilling the requirements laid down in this Law, except where this is to be considered a serious or very serious contravention.

10. Failure on the part of the operators to comply with the obligations in respect of the legal interception of communications imposed in the development of Article 39 of this Law, when it is not characterised as a very serious or serious contravention.

11. Failure to comply with public service obligations, public obligations and the contravention of consumer and end-user rights, as laid down in Title III of the Law and its implementing regulations.

12. Failure to comply with service quality obligations.

13. Not submitting the documentation on common telecommunications installations to the administration or owners when said submission is mandatory under the law.

Article 79. *Sanctions.*

1. The following sanctions shall be imposed for committing the contraventions in the preceding Articles:

a) For committing very serious contraventions, a fine of up to €20 million shall be imposed on the offender.

For committing very serious contraventions classified among those over which the National Authority on Markets and Competition has disciplinary powers, a fine in an amount not less than equal to and not more than five times the gross profit obtained as a result of the acts or omissions of which the contravention consists. In the event that it does not prove possible to apply this criterion, the maximum limit of the penalty shall be €20 million.

b) Depending on the circumstances, very serious contraventions may lead to the operator's being barred for up to five years from operating networks or providing electronic communications services. It may also lead to being barred for up to five years from engaging in the activity of installer.

c) For committing serious contraventions, a fine of up to €2 million shall be imposed on the offender.

For committing very serious contraventions classified among those over which the National Authority on Markets and Competition has disciplinary powers, a fine for an amount up to twice the gross profit obtained as a result of the acts or omissions of which the contraventions consist or, in the event it is not possible to apply this criterion, the maximum limit of the penalty shall be €2 million.

d) For committing minor contraventions, a fine of up to €50,000 shall be imposed on the offender.

2. The sanctions imposed for any of the contraventions included in Articles 76 and 77, when a licence is required to engage in the activity carried out by the offender, may be accompanied, as a complementary sanction, by the sealing off or seizure of the equipment or apparatus or the closure of the installations until the aforementioned licence is obtained.

3. As well as such sanction as may be applicable to the offenders, when a legal person is involved, a fine of up to €5,000 in the case of minor contraventions, up to €30,000 in the case of serious contraventions and up to €60,000 in the case of very serious contraventions may be imposed on their legal representatives or the persons forming the executive bodies involved in the agreement or decision.

Those persons who, though forming part of collegiate management bodies, did not attend the meetings or voted against or abstained, are exempted from the sanction.

4. For the purposes of the provisions in this Law, the definitive sanction of two or more contraventions of the same type in a period of three years shall be considered repeated non-compliance.

Article 80. *Criteria for determining the amount of the sanction.*

1. The amount of the sanction imposed, within the given limits, shall be graduated taking into account, in addition to the provisions in Article 131.3 of Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, the following:

a) The seriousness of any contraventions previously committed by the person being sanctioned:

- b) The social repercussions of the contravention.
- c) The profit to the offender from the act that is the object of the contravention.
- d) The damage caused and its redress.
- e) Voluntary compliance with any precautionary measures that might be imposed in the disciplinary proceedings.
- f) Denying or hindering access to the installations or refusing to provide the information or documentation demanded.
- g) Ceasing the offending behaviour prior to or during the course of the disciplinary proceedings.

2. In establishing the sanction, account shall also be taken of the offender's financial situation on the basis of his assets, income, any family responsibilities and such other personal circumstances as he can prove affect him.

The offender shall be obliged, where applicable, to pay the taxes that he would have had to pay if he had submitted the notification referred to in Article 6 or if he had had a licence for the use of the radio spectrum in the public domain.

Article 81. *Measures prior to disciplinary proceedings.*

1. Prior to initiating the disciplinary proceedings, the competent body of the Ministry of Industry, Energy and Tourism may, in a ruling with no prior hearing, order the cessation of the activity presumed to be in contravention when there are reasons of urgent need based on any of the following circumstances:

- a) When the alleged offending activity could cause serious harm to the operations of the Public Safety, Civil Defence and Emergency services.
- b) When engaging in the presumed offending activity could put human lives in danger.
- c) When it may seriously interfere with other electronic communications services or networks.

2. The cease and desist order shall be addressed to anyone who is in a position to carry out said order, without prejudice to the subsequent assignment of responsibilities in the corresponding disciplinary proceedings. To enforce it, the ruling may order that assistance be provided by the police, through the government authorities.

The ruling shall determine the scope of the measure, in terms of its objectives and time frame, which may not exceed one month.

Article 82. *Precautionary measures in the disciplinary proceedings.*

1. The contraventions referred to in Articles 76 and 77 may, after disciplinary proceedings have been instituted, lead to the adoption of precautionary measures that, pursuant to Article 136 of Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, may consist of the following:

- a) Ordering the immediate cessation of unauthorised radio emissions.
- b) Ordering the immediate cessation of any other activity presumed to be a contravention.

Among them,

i) Issuing orders to end the provision of a service or a series of services, or to postpone said provision when it could result in serious harm to competition, until the specific obligations imposed on the basis of a market analysis pursuant to Article 14 are complied with. This measure, together with the reasons on which it is based, shall be communicated to the affected operator without delay,

setting a reasonable time frame for the company to comply with said measure.

ii) Preventing an operator from continuing to operate electronic communications networks or services, or suspending or withdrawing his usage rights, in the event of a serious, repeated contravention of the conditions established for providing services or operating networks or for granting usage rights or of any specific obligations that may have been imposed, when the measures intended to require the cessation of the contravention have failed.

iii) Adopting provisional, urgent measures designed to remedy breaches of the conditions established for the provision of services or the operation of networks or the granting of usage rights or of any specific obligations that may have been imposed, when said breaches represent an immediate, serious threat to public safety or public health or create serious economic or operational problems for other suppliers or users of the radio spectrum. Subsequently the operator concerned must be offered the possibility of proposing possible solutions. Where appropriate, the competent authority may confirm the provisional measures, which must continue until the ruling that brings to an end the disciplinary proceedings.

c) Sealing off the equipment or installations used by the offender, the subsidiary execution system laid down in Article 98 of said Law being applicable where appropriate.

d) Removing from the market such equipment and apparatus as has allegedly not had its compliance evaluated pursuant to the applicable regulations.

e) The provisional suspension of the validity of the licence and the provisional closing of the installations for a maximum period of six months.

2. When the offender does not have a licence to occupy or use the public airwaves, or if the contravention exceeds the radio emissions levels laid down in the regulations developed from Article 61, the precautionary measure in paragraph a) of the preceding section shall compulsorily be included in the order to initiate disciplinary proceedings, with the aim of safeguarding the proper use of said public domain.

3. Without prejudice to the cases in which this precept sets a maximum duration, the precautionary measures may continue until the ruling on the disciplinary proceedings, providing it is considered necessary to ensure the effectiveness of the final ruling that could be issued. As an exception, the precautionary measure of removing from the market the equipment and apparatus the compliance of which is presumed not to have been evaluated pursuant to the applicable regulations must be lifted when it is proven that the evaluation of the compliance of the equipment and apparatus affected has been performed.

Article 83. *Limitation.*

1. The statutory limitation on the contraventions regulated in this Law shall be three years for very serious contraventions, two years for serious contraventions and one year for minor contraventions.

The statutory limitation period for contraventions shall start to count on the day on which they were committed. The statutory limitation period shall be interrupted by the initiation of disciplinary proceedings, with the knowledge of the interested party. The statutory limitation period shall resume if the disciplinary proceedings are frozen for more than one month for a reason that cannot be attributed to the person presumed responsible.

In the case of a continuing contravention, the start date of the calculation shall be that on which the offending activity ceases to be engaged in or the date of the last act of which the contravention consists. However, it shall be understood that the contravention continues as long as the equipment, apparatus or installations that are the object of the proceedings are not at the disposal of the Administration or until there is reliable evidence of the impossibility of their being used.

2. The sanction imposed for very serious contraventions shall be limited to three years, those

imposed for serious contraventions to two years, and those imposed for minor contraventions to one year. The statutory limitation period for sanctions shall start to count on the day following that on which the ruling imposing the sanction becomes binding. The initiation, with the knowledge of the interested party, of the enforcement procedure shall interrupt the statutory limitation period and this period shall resume if said procedure is frozen for more than one month for a cause that cannot be attributed to the offender.

Article 84. *Sanctioning powers.*

Sanctioning power shall correspond to:

1. The Secretary of State for Telecommunications and the Information Society, for the imposition of the sanctions not included in the following sections.

2. The National Authority on Markets and Competition, within the material scope of its actions, when the contraventions are classified as very serious under Article 76, sections 12, 15 and 16, serious contraventions under Article 77, sections 11, 27, 28, 35 and 36 and minor contraventions under Article 78, section 4.

3. The Spanish Data Protection Agency, in the event that the contraventions are classified as serious under Article 77, section 37 and minor contraventions under Article 78, section 11 when they infringe on the rights of end-users to data protection and privacy recognised in Article 48.

4. The exercise of the disciplinary power shall be subject to the procedure generally applicable to the actions of the public administrations. Nevertheless, the maximum duration of the proceedings shall be one year and the period for arguments shall not be less than one month.

First additional provision. *Meaning of the terms used in this Law.*

For the purposes of this Law, the terms defined in Appendix II shall have the meaning assigned to them therein.

Second additional provision. *Limitations and easements.*

1. The limitations on property and easements referred to in Article 33, section 1 of this Law may affect:

- a) The maximum height of buildings.
- b) The minimum distance at which high voltage electrical industries and installations and electrified railway lines may be located.
- c) The minimum distance at which radio transmitters may be installed.

2. With the exception of the current legislation applicable to national defence and air navigation, neither limitations on property nor easements may statutorily be established that contain more onerous conditions than the following:

- a) For distances of less than 1,000 metres, the angle from the horizontal at which the highest point of a building may be observed from the top of the station's lowest receiving antennae shall be a maximum of three degrees.
- b) The maximum required clearance between an industry or a high voltage power line or railway power line and any of the station's receiving antennae shall be 1,000 metres.

The installation of radio transmitters close to the station shall have the following limitations:

Frequency range	Apparent radiated power of the transmitter directed toward the installation to be protected – Kilowatts	Maximum required clearance between the installations to be protected and the transmitter antenna – Kilometres
f ≤ 30 MHz	0.01 < P < 1	2
	1 < P ≤ 10	10
	P > 10	20
f > 30 MHz	0.01 < P ≤ 1	1
	1 < P ≤ 10	2
	P > 10	5

3. Limits on electrical field intensity shall be required for installations with highly sensitive equipment. It is understood that installations dedicated to research utilise highly sensitive equipment:

- a) For stations dedicated to radio astronomical observation, these limits shall be as follows:

Maximum admissible spectral flux density of radio astronomy observation stations ^{(1) (2)}

Central frequency (MHz)	Channel bandwidth (kHz)	Spectral flux density (dB(W/(m ² · Hz)))	Radio astronomy observations
13.385	50	-248	Continuous.
25.61	120	-249	Continuous.
151.525	2,950	-259	Continuous.
325.3	6,600	-258	Continuous.
327	10	-244	Spectral rays.
408.05	3,900	-255	Continuous.

Central frequency (MHz)	Channel bandwidth (kHz)	Spectral flux density (dB(W/(m ² · Hz)))	Radio astronomy observations
1,413.5	27,000	-255	Continuous.
1,420	20	-239	Spectral rays.
1,612	20	-238	Spectral rays.
1,665	20	-237	Spectral rays.
1,665	10,000	-251	Continuous.
2,695	10,000	-247	Continuous.
4,995	10,000	-241	Continuous.
10,650	100,000	-240	Continuous.
15,375	50,000	-233	Continuous.
22,200	250	-216	Spectral rays.
22,355	290,000	-231	Continuous.
23,700	250	-215	Spectral rays.
23,800	400,000	-233	Continuous.
31,550	500,000	-228	Continuous.
43,000	500	-210	Spectral rays.
43,000	1,000,000	-227	Continuous.
76,750	8,000,000	-229	Continuous.
82,500	8,000,000	-228	Continuous.

Central frequency (MHz)	Channel bandwidth (kHz)	Spectral flux density (dB(W/(m ² · Hz)))	Radio astronomy observations
88,600	1,000	-208	Spectral rays.
89,000	8,000,000	-228	Continuous.
105,050	8,000,000	-223	Continuous.
132,000	8,000,000	-223	Continuous.
147,250	8,000,000	-223	Continuous.
150,000	1,000	-204	Spectral rays.
165,500	8,000,000	-222	Continuous.
183,500	8,000,000	-220	Continuous.
215,750	8,000,000	-218	Continuous.
220,000	1,000	-199	Spectral rays.
244,500	8,000,000	-217	Continuous.
265,000	1,000	-197	Spectral rays.
270,000	8,000,000	-216	Continuous.

(1) The preceding values correspond to a supposed gain on a radio astronomy receiving antenna of 0 dBi.

(2) For systems interfering with propagation conditions that vary over time, the given levels may not exceed a data loss of more than 2%.

b) To protect astrophysics observatory installations, the limit on electrical field intensity, on any frequency, shall be 88.8 dB ($\mu\text{V}/\text{m}$) on the site of the observatory.

4. To take better advantage of the radio spectrum, the Administration may impose on installations the use of technical elements that improve inter-station radio compatibility.

Third additional provision. *Application of legislation regulating the common infrastructure of buildings.*

The common infrastructure of buildings is governed by the provisions in this Law, Royal Decree-Law 1/1998 of 27 February on common infrastructure in buildings for access to telecommunications services and the implementing regulations.

Fourth additional provision. *Confidential information.*

Natural or legal persons who provide a National Regulation Authority with data or information of any kind, in the performance of their duties and in compliance with current legislation on data protection and privacy, may indicate, with justification, which part of the information provided they consider confidential and likely to harm them if disclosed, so that it can be declared confidential. Each National Regulation Authority shall decide, giving reasons in the appropriate rulings, whether information is or is not covered by confidentiality, in accordance with current legislation.

Fifth additional provision. *The Telecommunications and Information Society Advisory Board.*

1. The Telecommunications and Information Society Advisory Board, which is chaired by the Minister of Industry, Energy and Tourism or the person that he delegates, is an advisory body to the Government on matters of telecommunications and the information society.

2. The duties of the Board shall be to study, deliberate and make proposals on telecommunications and the information society, without prejudice to the powers that correspond to

the joint inter-ministerial bodies with powers to report to the Government on IT policy. It shall also be responsible for reporting on the issues that the Government decides or on those that, on its own initiative, it considers appropriate. The deliberation of proposed or draft legislation by the Telecommunications and Information Society Advisory Board shall be the equivalent of the hearing referred to in Article 24.1.c) of Law 50/1997 of 27 November on the Government.

The Government, shall, in a Royal Decree, provide for the composition and operating scheme of the Telecommunications and Information Society Advisory Board, whose members shall represent the General State Administration, the Autonomous Community administrations, the local administrations through their most representative associations or federations, users, including disabled persons through their most representative organisation, the operators that provide services or operate electronic communications networks, audiovisual communications service providers, information society service providers, industries manufacturing telecommunications and information society equipment, the trade unions and the most representative official professional associations in the engineering sector.

Sixth additional provision. *Coercive fines.*

To ensure compliance with the rulings or requests for information that they issue, the Ministry of Industry, Energy and Tourism or the National Authority on Markets and Competition may impose coercive fines for a daily amount of up to €125, in the terms laid down in Law 30/1992 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure.

The coercive fines shall be separate from the sanctions that may be imposed and are compatible with them.

The amount of the coercive fines in this provision shall be paid into the Public Treasury.

Seventh additional provision. *Obligations for conditional access, access to certain radio and television broadcasting services, wide-screen television and transmission obligations*

1. The conditions applicable to the operators of public electronic communications networks in regard to conditional access to digital television and radio services broadcast to viewers and listeners, regardless of the transmission medium used, may be established in a Royal Decree. The procedure for the National Authority on Markets and Competition's reviewing said conditions shall also be regulated in a Royal Decree, should the obligated operator not already have significant power in the market in question.

2. Insofar as it is necessary to guarantee access by end-users to certain digital radio and television services, the National Authority on Markets and Competition may impose, in the manner and for the services determined by the Government in a Royal Decree, obligations on the operators that have application programming interfaces (API) and electronic programming guides (EPG) in order for them to facilitate access to these resources under reasonable, fair and non-discriminatory conditions.

3. Public electronic communications networks used to distribute digital television services must have the capacity to distribute wide-screen television programmes and services. The operators of said networks that receive wide-screen programmes or services for subsequent distribution shall be obliged to maintain this format.

4. Reasonable requirements regarding the transmission of certain radio and television programme channels may be imposed on the operators that operate electronic communications networks used to distribute radio and television programmes to the public as public service obligations, in a Royal Decree adopted by the Council of Ministers, in addition to requirements to transmit complementary services to provide suitable access for disabled users, if a significant number of end-users of said networks use them as the main medium for receiving radio and

television programmes, when it is necessary to meet clearly defined general interest objectives in a proportionate, transparent manner, with periodic reviews.

Conditions may also be set in a Royal Decree on the digital television equipment and service providers, so that they cooperate on providing interoperable televised audiovisual communication services for disabled end-users.

5. The introduction of obligations and requirements for the managers of digital terrestrial television digital multiplexers and the creation and regulation of the Register of digital terrestrial television service information parameters shall be regulated by ministerial order. The management, allocation and monitoring of digital terrestrial television service information parameters and the keeping of said Register shall correspond to the Ministry of Industry, Energy and Tourism.

Eighth additional provision. *Notification mechanism.*

The measures adopted by a national regulation authority pursuant to Articles 13, 14 and 16 and the seventh additional provision of this Law and its implementing regulations, as well as all measures that could have repercussions on exchanges between member states, shall be subject to the notification mechanism referred to in Articles 7, 7a and 7b of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and service (the Framework Directive) and the regulations issued by the European Union to implement them.

Ninth additional provision. *Report on the obligations to be imposed on operators of public networks or publicly available electronic communications services.*

Any regulatory measure that is going to be approved after the entry into effect of this Law or any administrative action executing said regulatory measure that is handled by any Public Administration and seeks to impose in a general manner public service obligations other than those provided for in Article 28 of this Law, obligations to oversee the information processed or managed on said networks or services or obligations to cooperate with authorised officials in regard to the traffic managed on the operators of public networks or publicly available electronic communications services or on a specific group of operators shall require a mandatory report from the Ministry of Industry, Energy and Tourism.

Said regulatory measure or administrative action must expressly contain the mechanisms for funding the costs arising from public service obligations other than those in Article 28 of this Law, public obligations or any other administrative burden that is imposed, which may not be borne by the operators of public networks or publicly available electronic communications when these are obligations or burdens that do not directly arise from the regulatory framework for electronic communications but are the result of other reasons of public policy, unless there are reasons of public interest that lead to the conclusion that said operators must assume said costs, even if partially.

The request for a mandatory report from the Ministry of Industry, Energy and Tourism is considered to be an essential requirement for the formalisation of the regulation or administrative action.

Tenth additional provision. *Creation of the Inter-Ministerial Commission on radio frequencies and health.*

The composition, organisation and duties of the Inter-Ministerial Commission on radio frequencies and health shall be regulated in a Royal Decree. The Commission's mission is to advise and inform the public, all the public administrations and the various players in the industry on the restrictions established for radio emissions, the measures approved to protect public health from radio emissions

and the many periodic checks to which installations that generate radio emissions are subject, especially those relating to radio communications. Said Commission shall also carry out and publish studies and research on radio emissions and their effects and how the restrictions on emissions, health protection measures and inspections preserve the health of people. It shall also, in the light of said studies and research, make proposals and suggest lines along which the measures and controls to be made may be improved.

The Ministry of Industry, Energy and Tourism, Ministry of Health, Social Services and Equality, and the Carlos III Institute of Health on behalf of the Ministry of Economy and Competitiveness shall in all cases form part of the Inter-Ministerial Commission.

Said Commission shall have a radio frequency and health advisory or support group, with the participation of the Autonomous Communities, the major state-level local authority association and a group of independent experts, scientific societies and representatives of the public, to periodically evaluate and monitor radio emission-related public health prevention and protection. The group shall propose research studies, pre-arranged identification measures, the creation of records and customer-support protocols.

The creation and operation of both the Commission and the Advisory Group shall be covered by the current staffing, technical and budgetary resources allocated to the Ministries and other Administrations taking part, with no increase in public expenditure.

Eleventh additional provision. *Essential technical parameters and requirements for ensuring the operation of the various electronic communications networks and services.*

The technical parameters and requirements that are essential for ensuring the operation of the various electronic communications networks and services shall be set in a Royal Decree adopted by the Council of Ministers.

Twelfth additional provision. *Application of the General Tax Act.*

The provisions in this Law shall be understood to be without prejudice to the powers and responsibilities that Law 58/2003 of 17 December, the General Tax Act, assigns to the Tax Administration, especially in relation to access to data with tax implications.

Thirteenth additional provision. *Publication of actions.*

The actions that form part of the different stages of the procedures handled by the Ministry of Industry, Energy and Tourism in the exercise of the powers and responsibilities assigned in respect of the matters referred to in this Law, may be published in the Official State Gazette, pursuant to Article 60 of Law 30/1991 of 26 November on the Legal Regulations for the Public Administrations and the Common Administrative Procedure. In addition, all the rulings, administrative actions or procedural actions taken by the Ministry of Industry, Energy and Tourism in the exercise of the powers and responsibilities assigned in respect of the matters referred to in this Law that might have an indeterminate number of potentially interested parties that require notification must be published in the Official State Gazette pursuant to Article 59.6, letter a) of Law 30/1992, of 26 November.

Fourteenth additional provision. *Coordination of public aid to broadband and economic development and digital employment and new digital services.*

The competent bodies and the procedures for coordination between the public administrations and agencies in regard to public aid to broadband shall be identified in a Royal Decree. The announcement and granting of said aid must in all cases respect the Community framework and the objectives stipulated in Article 3 of this Law and in regard to the promotion of R&D+I and actions to

develop the economy, digital employment and all the new digital services that the new ultra-fast networks permit, ensuring social and territorial cohesion.

Fifteenth additional provision. *Allocation of resources to the General State Administration and incorporation of personnel from the National Authority on Markets and Competition.*

1. The Government shall adopt the amendments necessary in the Royal Decree implementing the basic organisational structure of the Ministry of Industry, Energy and Tourism so as to ensure the exercise of the functions that this Law assigns to the Ministry of Industry, Energy and Tourism, which are the competence of the National Authority on Markets and Competition until the entry into effect of this Law.

The entry into effect of the amendment to the Royal Decree on the basic organisational structure of the Ministry of Industry, Energy and Tourism shall not occur until the budget of the Ministry of Industry, Energy and Tourism matches the new distribution of powers and the assumption of new material resources, including, in particular, computer systems and applications and the incorporation of personnel from the National Authority on Markets and Competition who are required so that the Ministry of Industry, Energy and Tourism can perform the new duties assigned to it.

2. The personnel from the National Authority on Markets and Competition who are performing the duties that are the competence of said Authority until this Law comes into effect and are then assigned by said Law to the Ministry of Industry, Energy and Tourism, shall join the General State Administration on the terms indicated in the sixth additional provision of the Law on the creation of the National Authority on Markets and Competition.

3. The date for the effective exercise of the new functions that this Law assigns to the Ministry of Industry, Energy and Tourism shall be decided in an order from the Minister of the Presidency, proposed by the Minister of Industry, Energy and Tourism, the Minister of the Economy and Competitiveness and the Minister of Finance and Public Administrations. In any case, all the actions referred to in this provision must have taken place within four months of the entry into effect of this Law.

Sixteenth additional provision. *The public business entity Red.es.*

1. The entity Red.es, created by the sixth additional provisional of Law 11/1998 of 24 April, the General Telecommunications Act, is organised as a public business entity pursuant to Article 43.1.b) of Law 6/1997 of 14 April on the Organisation and Functioning of the General State Administration. Said entity is attached to the Ministry of Industry, Energy and Tourism, through the office of the Secretary of State for Telecommunications and the Information Society.

2. The public business entity Red.es has its own legal personality, full capacity to operate and its own assets and shall be governed by the terms of this additional provision, its own Statute, the aforementioned Law 86/1997 and all other applicable regulations.

3. The purpose of the public business entity is the management, administration and disposal of the goods and rights that make up its assets. It is responsible for holding, administering, acquiring and disposing of the securities representing the capital of the companies in which it holds an interest or may hold one in the future. The public business entity shall act in accordance with business criteria to fulfil its purpose.

To fulfil its purpose, the public business entity may perform all types of acts of administration and disposal laid down in civil and mercantile legislation. It may also carry out any business or industrial activities that are related to said purpose, in accordance with the decisions of its governing bodies. It may even act through companies in which it has a stake.

The public business entity Red.es shall also have the following functions:

- a) To manage the register of Internet domain names and addresses under the country code

corresponding to Spain (.es), in accordance with the registration policy decided by the Ministry of Industry, Energy and Tourism and the corresponding regulations.

b) To participate in the bodies that coordinate the management of the Internet Corporation for Assigned Names and Numbers (ICANN) Register of names and domains, or the organisation that, where appropriate, replaces it. It shall also advise the Ministry of Industry, Energy and Tourism on the ICANN Governmental Advisory Committee (GAC) and, in general, when so requested, advise the General State Administration on other international organisations, especially the European Union, on all topics within its competence.

c) To act as the observatory for the telecommunications and information society sector.

d) To draw up studies and reports and, in general, to advise the General State Administration on everything related to the information society, in accordance with the instructions issued by the Ministry of Industry, Energy and Tourism.

e) To foster and develop the Information Society.

4. The entity's contracting, procurement and disposal scheme shall be brought into line with the rules established in private law, without prejudice to the decisions in the revised text of the Public Sector Contracts Act, approved by Royal Legislative Decree 3/2011 of 14 November.

5. The public business entity's asset scheme shall be brought into line with the provisions in Article 56 of Law 6/1997. However, the actions of transferring the ownership of and disposing of the goods that make up its assets shall be governed by private law. In particular, the public business entity Red.es may allocate its assets to the duties assigned to it in section three, letter e) of this provision and to temporarily financing the operating deficit resulting from the revenues and expenditure corresponding to the duties assigned in letters a), b), c) and d) of this same section.

6. The public business entity's hiring of staff shall be in accordance with labour law, pursuant to the provisions in Article 55 of Law 6/1997, and in any case it must respect the principles of equality, merit and capacity.

7. The budgetary, economic and financial, accounting, auditing and financial control scheme of the public business entity shall be as set in the General Budget Act, pursuant to the provisions in Article 58 and transitional provision three of Law 6/1997.

8. The economic resources of the entity may come from any of those listed in Article 65, section 1 of Law 6/1997 of 14 April on the Organisation and Functioning of the General State Administration. The economic resources of the public business entity Red.es include the revenues collected as the public price for registration operations in regard to Internet domain names with the country code corresponding to Spain, ".es", regulated in the following section.

9. Public Prices for the assignment, renewal and other registration operations of domain names with ".es".

The monetary compensation that is paid for the assignment, renewal and other registration operations performed by the public business entity Red.es in the exercise of its function as the Assignment Authority for Internet domain names with the country code corresponding to Spain shall be considered a public price.

With prior approval from the Ministry of Industry, Energy and Tourism, Red.es shall issue an instruction with the public price tariffs for the assignment and renewal and other operations for registering domain names with ".es". The proposal to establish or alter the amount of the public prices shall be accompanied, pursuant to Article 26 of Law 8/1989 of 13 April regulating the Legal System of Public Fees and Prices, by an economic and financial memorandum justifying the amount of the proposed changes and the level of financial coverage of the corresponding costs.

The management of collecting the public prices referred to in this section corresponds to the public business entity Red.es, which shall decide the procedure for their settlement and payment in the memorandum referred to in the preceding paragraph, which shall establish the declaration forms, deadlines and means of payment.

The public business entity Red.es may require an advance or deposit on the total or partial

amount of the public prices for registration operations for .es domain names.

Seventeenth additional provision. *Innovation in the area of information and communication technologies.*

The Government shall implement a plan with measures to promote innovation in the area of information and communication technologies and to enable advantage to be taken of the investment effort that, in coming years, will be made to deploy ultra-fast networks. The aforementioned plan shall include, among others, the following actions:

- a) Promoting the setting up of a forum for cooperation between the operators and industry to identify and promote opportunities for the electronics industry and the rest of industry that will generate the deployment of ultra-fast networks.
- b) Stimulating policies for innovation in the sector and technological innovation in the industrial fabric in cooperation with all the players involved in development or growth.
- c) Setting up measures to foster innovative purchasing and the early adopter market to implement information and communication technology-related R&D+I projects.

Eighteenth additional provision. *Making ultra-fast broadband universally available.*

The Government shall establish a National Ultra-Fast Network Strategy with the aim of promoting the deployment of ultra-fast broadband access networks, both fixed and mobile, with a view to making them available to all, as well as fostering their adoption by the public, companies and administrations, to ensure social and territorial cohesion.

The Strategy shall adopt the measures required to reach the specific coverage and adoption objectives set by the Digital Agenda for Europe and incorporated into the Digital Agenda for Spain. In particular, it shall aim to attain a connection that universally permits broadband data communication that is gradually expanded. In 2017 it will reach a minimum Internet speed of 10 Mbps and before the end of 2020 it will bring all users a minimum Internet speed of 30 Mbps, with at least 50% of households having access to services with speeds of over 100 Mbps. When developing this universal broadband initiative, the updating of the scope of the universal service shall be evaluated in relation to this service, bearing in mind, in all cases, European Union regulations and guidelines in this regard.

The Strategy shall lay down the drawing up of an ultra-fast broadband coverage report that makes it possible to know the precise situation of broadband electronic communications service provision and identify the areas where there are gaps in the market.

The Strategy shall include policies to increase the adoption and use of ultra-fast broadband among the public, company and administrations. In particular, the actions shall be taken that are needed to promote, as a priority, the connection of regional health centres, public universities, public secondary schools and all city and regional public libraries to the public communications network with the functional capacity to access the Internet at a minimum speed of 30 Mbps in 2016 and 100 Mbps in 2020. These measures shall be organised with due cooperation and coordination with the Autonomous Communities.

At least once a year, the Ministry of Industry, Energy and Tourism shall report to Parliament on the adoption and fulfilment of the National Ultra-Fast Network Strategy and, in particular, on the progress of the deployment of ultra-fast networks and the fulfilment of the objective of making this service available to all.

Nineteenth additional provision. *Amateur radio stations.*

For the installation of amateur radio stations, the terms of additional provision three of Law 12/2012

of 26 December on urgent measures to deregulate commerce and certain services, shall be applicable, without prejudice to the application of Law 19/1983 of 16 November on the regulation of the right to install amateur radio station aerials in the interior of buildings, and its implementing regulations.

First transitional provision. *Regulation prior to the entry into effect of this Law.*

The current regulations governing telecommunications prior to the entry into effect of this Law or issued to implement Law 32/2003 of 3 November, the General Telecommunications Act, shall continue to be in effect as long as they do not conflict with this Law, until its implementing regulations have been adopted.

Second transitional provision. *Adaptation of operators directly or indirectly controlled by public administrations to the system provided for in Article 9.*

The operators directly or indirectly controlled by public administrations must meet the terms of Article 9 within a maximum period of one year from the entry into effect of this Law.

Third transitional provision. *Conditions tied to concessions for the use of the public airwaves.*

The conditions linked to licences for operating networks or providing telecommunications services that involve the use of the public airwaves and were granted prior to the entry into effect of the Law through public tendering processes, already planned in the specifications governing the tenders or the operator's bid, shall now be linked to concessions for the private use of the public airwaves.

Fourth transitional provision. *Restrictions on the principles of technological neutrality and services in licences for the use of the radio spectrum for providing electronic communications services.*

1. The conditions set out in the concessions for the use of the public airwaves for the provision of electronic communications services granted prior to 25 May 2011 that involve restrictions on the principles of technological neutrality and services in the terms laid down in Article 66 of this Law, shall continue to be valid until 25 May 2016.

2. Notwithstanding the foregoing, the holders of licences for the use of the public airwaves for the provision of electronic communications services with a period of validity that extends beyond 25 May 2016 may request the office of the Secretary of State for Telecommunications and the Information Society, before 25 May 2016, for an evaluation of the restrictions on the principles of technological neutrality and services in the terms laid down in Article 66 of this Law, which are imposed on its licences.

Before issuing a ruling, the Secretary of State for Telecommunications and the Information Society shall notify the licence holder of the new evaluation of the restrictions, indicating the scope of that licence thereunder and granting him a period of 15 working days to withdraw his application.

If the holder of the licence withdraws his application, the restrictions on the principles of technological neutrality and services laid down in the licence would continue without alteration until 26 May 2016, unless the licence expires before this date.

3. As of 25 May 2016, the principles of technological neutrality and services shall be applied to all licences for the use of the public airwaves for the provision of electronic communications services granted prior to 25 May 2011, without prejudice to the restrictions that could be established under the terms of Article 66 of this Law.

4. In application of this provision, appropriate measures to promote fair competition shall be taken.

5. The measures that are adopted to carry out this provision shall in no circumstances be

considered to grant a new licence.

Fifth transitional provision. *Provision of certain services referred to in Article 28.*

Sociedad Estatal Correos y Telégrafos, S.A. (the Post Office) shall directly provide telex and telegraph services and other similar electronic communications services referred to in Article 28.2 of this Law, altering them to fit the terms of the Royal Decree provided for in section 3 of said Article.

In addition, the Directorate General of the Merchant Navy is charged with providing the services for the safety of human life at sea assumed under Article 28.1.

Sixth transitional provision. *Transitional scheme for setting the taxes established in Appendix I of this Law.*

Until the General State Budget Act sets the amounts for the tax provided for in section 4 of Appendix I of this Law, the following shall apply:

- a) For the issuing of registration certificates, €42.51.
- b) For the issuing of certificates for the submission to the telecommunications administration of the technical project for common telecommunications infrastructure, the certificate of commencement, installation report and test protocol and, where appropriate, the completion certificate and its appendices, €42.51.
- c) For the issuing of certificates of compliance with technical specifications, €335.49.
- d) For each act of prior inspection or technical monitoring performed, €352.72.
- e) For the submission of each certificate issued by a competent technician that replaces the prior inspection, €88.
- f) For processing a licence or public domain concession for the private use of the public airwaves, €68.46.
- g) For processing a licence for the special use of the public airwaves by amateur radio enthusiasts, €111.
- h) For taking the examinations to qualify to operate amateur radio stations, 22.98 Euros.
- i) For registering with the telecommunications installer company register, €104.54.
- j) For an application for and the issuing of the technical ruling on the compliance of telecommunications equipment and apparatus, €345.82.

Seventh transitional provision. *Applications for administrative permits or licences made in advance.*

1. Procedures begun prior to the entry into effect of this Law, for the purpose of obtaining construction, installation, operating or activity licences or permits, or environmental or other similar or analogous types of authorisation that were required under previous regulations, shall be handled and resolved under the regulations in force at the time the application was submitted.

2. Notwithstanding the provisions in the preceding section, the interested party may, prior to the decision, withdraw the application and, in this way, opt for the application of the new regulations insofar as they are applicable.

Eighth transitional provision. *Register of operators.*

When this Law enters into force, the recording of the information shown in the Register of operators regulated in Article 7 of Law 32/2003, of 3 November, the General Telecommunications Act, continues.

Ninth transitional provision. *Adaptation of land planning and city planning regulations and instruments drawn up by the competent public administrations that affect the deployment of public electronic communications networks.*

Land and urban planning regulations and instruments drawn up by the competent public administrations that affect public electronic communications networks must come into line with the terms of Articles 34 and 35 within a maximum of one year from the entry into force of this Law.

Tenth transitional provision. *Transitional performance of functions by the National Authority on Markets and Competition.*

In regard to the duties that are the competence of the National Authority on Markets and Competition and that, pursuant to this Law, are assigned to the Ministry of Industry, Energy and Tourism, the National Authority on Markets and Competition shall perform said duties until the date set for the effective performance of the new duties assigned by this Law to the Ministry of Industry, Energy and Tourism pursuant to the fifteenth additional provision.

Eleventh transitional provision. *Proceedings initiated prior to the entry into effect of this Law.*

Proceedings linked with the duties that were the competence of the National Authority on Markets and Competition and that this Law assigns to the Ministry of Industry, Energy and Tourism, and which were initiated prior to the date for the effective performance of the new duties referred to in the fifteenth additional provision, shall continue to be handled by said Ministry once said date has passed.

Twelfth transitional provision. *Transitional scheme for radio stations and infrastructure for the provision of publicly available electronic communications services for the installation of which an application for a licence or permit has been submitted.*

Radio stations and infrastructure for the provision of publicly available electronic communications services for the installation of which a prior licence or authorisation for installation, operating or activity licences or permits, or environmental or other similar or analogous types of authorisation referred to in Article 34.6 has been requested may continue to be installed and to operate, without prejudice to the fact that the competent public administrations may exercise the disciplinary powers of checking, inspection, penalties and control in general that were assigned and are referred to said Article 34.6 and in Article 5 of Law 12/2012 of 26 December on Urgent Measures to Deregulate Trade and Certain Services.

However, in accordance with provisions in the transitional provision of the aforementioned Law 12/2012 of 26 December, public electronic communications service providers that have applied for the above-mentioned licences or authorisations, without prejudice to the continuity and functioning of the respective installations, may withdraw said applications while in process and opt to submit formal statements or, where appropriate, prior communications of a change of ownership pursuant to the terms laid down in said Law.

The exercise of the powers of checking, inspection, sanctions and control in general must respect the essential technical parameters and requirements needed to ensure the functioning of the different electronic communications networks and services mentioned in Article 34.4. and in the eleventh additional provision.

Sole repealing provision. *Repeal of legislation.*

Without prejudice to the terms of the transitional provisions in this Law, the following provisions

are repealed:

- a) Law 11/1998 of 24 April, the General Telecommunications Act.
- b) Law 32/2003 of 3 November, the General Telecommunications Act.
- c) Similarly, any other provisions of equal or lesser rank that are in conflict with the provisions of this Law are repealed.

First final provision. *Amendment to Law 13/2011 of 27 May on the regulation of gaming.*

Law 13/2011 of 27 May on the regulation of gaming:

One. Article 7, section 3 is amended and now reads as follows:

"3. Any entity, advertising network, advertising agency, audiovisual or electronic communications service provider, information society communications medium or service that disseminates advertising and the direct or indirect promotion of gaming or its operators must certify that whosoever requests the insertion of promotional messages or advertisements holds the corresponding licence issued by the authority responsible for regulating gaming and that said licence authorises him to conduct the advertising requested, and must abstain from its practice if he should lack said licence. Through its web site, the authority responsible for regulating gaming shall keep the information on the licensed operators up to date and accessible.

An entity that, on behalf of the publishers, offers advertisers the use of advertising space on information society services and the optimisation of the results of advertising by targeting the advertising to the public interested in the product or service advertised."

Two. Article 7, section 4 is amended and now reads as follows:

"4. The authority responsible for regulating gaming in the exercise of the administrative power to enforce the ceasing of advertising gaming activities shall address the respective entity, advertising network, advertising agency, audiovisual or electronic communications service provider, communications medium, information society service or advertising network, informing it and specifying the grounds of the contravention of the applicable regulations.

The entity, advertising network, advertising agency, audiovisual or electronic communications service provider, communications medium, information society service or advertising network must, in three calendar days of its reception, communicate its compliance with the requirement. Should the advertising message have a positive prior consultation report issued by an advertising self-regulation system with which the authority responsible for regulating gaming has a cooperation agreement pursuant to Article 24, section 5 of this Law, it shall be understood that there was good faith if it had been subject to said positive prior consultation report, in the case of administrative action carried out in the framework of disciplinary proceedings."

Three. *Article 21, section 8 is amended and now reads as follows:*

"8. Continuing unauthorised gaming, whether within the scope of the Spanish State or outside of Spain and aimed at Spanish territory, and provider of payment services, audiovisual communication services, communications media, information society or electronic communications services, advertising agencies and advertising networks may be required to provide information regarding the operations carried out by the different operators or organisations that do not have a licence or to cease providing the services."

Four. *Article 36, section 3 is amended and now reads as follows:*

"3. In particular, audiovisual communication, electronic communications and information society service providers, the communications media and advertising agencies and advertising networks shall be responsible for administering the promotion, sponsorship and advertising of the gaming referred to in this Law when those who do so do not hold a licence or when they are disseminated without having the authorisation to publicise them or outside the limits set in the licence or in contravention of current regulations on this matter. However, advertising networks that provide advertising to information society service providers shall be responsible for the contravention laid down in Article 40 d). The liability for information society services shall be supplementary to the liability of advertising agencies and networks, as long as the latter are appropriately identified by the information society service, at the request of the authority responsible for regulating gaming, and they have a permanent establishment in Spain.

The power to hear proceedings and sanction audiovisual communication service providers corresponds to the National Authority on Markets and Competition. In these case, the penalty scheme provided for in Law 7/2010 of 30 March, the General Audiovisual Communication Act, shall apply, except for the exception laid down in the preceding section, in regard to contraventions under Article 40, letter e)."

Five. *Article 40, section e) is amended and now reads as follows:*

"e) Failure to comply with demands for information or to cease providing services pronounced by the authority responsible for regulating gaming that are addressed to providers of payment services, audiovisual communication service providers, information society and electronic communications service providers, the social communications media, advertising agencies and advertising networks."

Second final provision. *Amendment to Law 34/2002 of 11 July on services to the information society and electronic commerce.*

Law 34/2002, of 11 July, on services to the information society and electronic commerce, is amended as follows:

One. Article 10, section 1 f) now reads as follows:

"f) When the information society service makes a reference to pricing, clear and exact information shall be provided on the price of the product or service and shall indicate whether or not the applicable taxes and any applicable delivery costs are included ."

Two. Article 18, section 1 is amended and now reads as follows:

"1. The public administrations shall promote, by means of coordination and guidance, the drawing up and application of voluntary codes of conduct by corporations, associations and business, professional and consumer organisations, in regard to the matters regulated in this Law. The General State Administration shall promote, in particular, the drawing up of codes of conduct at the Community or international level.

The codes of conduct that affect consumers and users shall also be subject to Chapter V of Law 3/1991, of 10 January, on unfair competition.

The codes of conduct may deal with, in particular, the procedures for detecting and

removing illegal content and the protection of the recipients from the sending by electronic means of unsolicited commercial communications, as well as the extra-judicial procedures for resolving conflicts that arise due to the provision of information society services."

Three. Article 20, sections 1 and 3 now read as follows:

"1. Commercial communications sent by electronic means must be clearly identifiable as such, and the natural or legal person on behalf of whom they are sent must also be clearly identifiable."

"3. The provisions in the preceding sections are understood to be without prejudice to what is laid down in the regulations issued by the Autonomous Communities with exclusive powers over consumption."

Four. Article 21, section 2 now reads as follows:

"2. The provisions in the preceding section shall not be applicable when there is a prior contractual relationship, as long as the provider obtained the recipient's contact information legally and will use them to send commercial communications referring to products or services that are similar to those that were originally the object of the contract with the customer.

In all cases, the provider must offer recipients the possibility of opposing the processing of their information for promotional purposes by means of a simple, free process, both when the information is collected and in each of the commercial communications sent to them.

When the communications were sent by e-mail, said method must necessarily consist of the inclusion of an e-mail address or other electronic address where this right can be exercised; it is forbidden to send communications that do not include said address.

Five. Article 22 now reads as follows:

"Article 22. *Rights of the recipients of services.*

1. Recipients may at any time withdraw their consent given to the receipt of commercial communications by simply notifying the sender of their wish.

To this end, service providers must provide simple, free processes whereby the recipients of services can withdraw the consent that they gave. When the communications were sent by e-mail, said method must necessarily consist of the inclusion of an e-mail address or other electronic address where this right can be exercised; it is forbidden to send communications that do not include said address.

Similarly, they must provide information on said procedures that is accessible by electronic means.

2. Service providers may use data storage and recovery devices on the recipients' terminal equipment, as long as said recipients have given their consent after clear and complete information was provided to them regarding its use, in particular the purposes of the data processing, pursuant to Organic Law 15/199 of 13 December on the protection of personal information.

When it is technically possible and effective, the consent of the recipient to accepting the processing of the data may be provided by the use of appropriate settings in the browser or other applications..

The foregoing shall not prevent the possible technical storage or access for the sole purpose of transmitting a communication over an electronic communications network or, insofar as it is strictly necessary, for providing an information society services expressly requested by the recipient."

Six. Article 35, section 1 is amended and now reads as follows:

"1. The Ministry of Industry, Energy and Tourism shall monitor compliance by the information society service providers with the information on the obligations laid down in this Law and the provisions implementing it, in regard to services for the information society.

However, the references to competent bodies in Articles 8, 10, 11, 15, 16, 17 and 38 shall be understood to refer to the jurisdictional or administrative bodies that, in each case, have the powers that depend on the matter in question."

Seven. Article 37 now reads as follows:

"Article 37. *Parties responsible.*

Information society service providers are subject to the penalty scheme laid down in this Title when this Law is applicable to them.

When the contraventions laid down in Articles 38.3 i) and 38.4 g) are due to the installation of data storage and retrieval devices as a result of the transfer by the information society service provider of its own spaces for showing advertising, it shall be responsible for the contravention, as will the information society service provider, advertising network or agent that directly manages with the former the placement of advertisements in said spaces when measures have not been adopted to require compliance with the duties of information and obtaining the user's consent.

Eight. Article 38, section 3 c) now reads as follows:

"c) the mass mailing of commercial communications by e-mail or another equivalent electronic communications medium, or insistent or systematic delivery of said communications to the same service recipient when these deliveries do not meet the requirements laid down in Article 21."

Nine. Article 38, section 3 i) now reads as follows:

"i) the repeated committing of the minor contravention provided for in section 4 g) when this has been declared to be so in a binding ruling issued in the three years immediately preceding the opening of the disciplinary proceedings."

Ten. Article 38.4, paragraph g) is amended and now reads as follows:

"g) Using data storage and retrieval devices when information has not been provided or the consent of the recipient of the service has not been obtained in the terms required by Article 22.2."

Eleven. A new Article, Article 39 bis, is introduced with the following content:

"Article 39 bis. *Moderation of sanctions.*

1. The disciplinary body shall set the amount of the sanction by applying the scale relating to the class of contraventions with the seriousness immediately preceding the one considered in the case in question, in the following cases:

- a) When a qualified reduction is found in the guilt of the accused or the illegality of the act as a result of the significant inclusion of several of the criteria listed in Article 40.
- b) When the offending entity has promptly regularised the irregular situation.

- c) When it can be seen that the behaviour of the affected party could have led to the committing of the contravention.
- d) When the offender has spontaneously acknowledged his or her guilt.
- e) When a takeover has occurred and the contravention was prior to said process, since the absorbing company cannot be charged with said contravention.

2. The bodies with disciplinary power, given the nature of the facts and the significant concurrence of the criteria in the preceding section, may rule not to initiate disciplinary proceedings and, instead, to warn the subject responsible that, within the time frame that the disciplinary body decides, it should certify the adoption of the corrective measures that, in each case, are appropriate, as long as the following situations occur:

- a) That the acts constitute a minor or serious contravention pursuant to this Law.
- b) That the competent body did not sanction or warn the offender previously as a result of committing contraventions included in this Law.

If the warning was not obeyed in the time that the disciplinary body set, the corresponding disciplinary proceedings shall be initiated for said contravention.

Twelve. Article 40 is amended and now reads as follows:

"Article 40. *Adjustment of the penalties.*

The fines imposed shall be set according to the following criteria:

- a) The existence of intention.
- b) The period during which the contravention was committed.
- c) The repeated commission of contraventions of the same nature, when they were declared to be so in a binding ruling.
- d) The nature and the amount of damage caused.
- e) The profit obtained from the contravention.
- f) The amount invoiced that was affected by the contravention committed.
- g) Adhering to a code of conduct or an applicable advertising self-regulation system in regard to the contravention committed, which complies with the terms of Article 18 or the eighth final provision and received a favourable report from the competent bodies or bodies.

Thirteen. Article 43 is amended and now reads as follows:

"1. The imposition of penalties for a breach of the provisions in this Law shall correspond, in the case of very serious contraventions, to the Minister of Industry, Energy and Tourism, and for serious and minor contraventions, to the Secretary of State for Telecommunications and the Information Society.

Notwithstanding the above, the imposition of penalties for a contravention of the rulings issued by the competent bodies depending on the matter or entity in question referred to in Article 38.2, paragraphs a) and b) of this Law shall correspond to the body that issued the ruling that was contravened. Likewise, it shall correspond to the Data Protection Agency to impose penalties for the committing of the contraventions listed in Articles 38.3 c), d) and i) and 38.4 d), g) and h) of this Law.

2. The disciplinary power regulated in this Law shall be exercised pursuant to Law 30/1002, of 26 November, on the Legal Regulations for the Public Administrations and the Common Administrative Procedure, and its implementing regulations. Nonetheless, the

maximum duration of the simplified proceedings shall be three months."

Fourteen. Section Five bis is introduced into the sixth additional provision, which reads as follows:

"Five bis. The assignment authority shall suspend as a precautionary measure or cancel, in accordance with the respective prior court order, domain names under which a contravention or misdemeanour contained in the Criminal Code is being committed. Similarly, the assignment authority shall proceed in the same manner when the State law enforcement agencies send it a precautionary suspension order issued as a preventive measure within 24 hours of the discovery of the facts.

Pursuant to Articles 8, 11 and other related Articles in this Law, the competent administrative or court authority, as a measure to obtain the interruption of the provision of an information society service or the removal of some content, may also demand that the assignment authority suspend as a precautionary measure or cancel a domain name.

It shall also act similarly in the other legally provided for cases.

In the cases laid down in the preceding paragraphs, a precautionary suspension or cancellation of a domain name may only be ordered when the service provider or person responsible did not heed the order issued to cease the illegal activity.

In all cases in which the Constitution, the regulations governing the respective rights and freedoms or those that are applicable to the different matters assign powers to the jurisdictional bodies exclusively to intervene in the exercise of activities or rights, only the competent court authority may order precautionary suspension or cancellation. In particular, when said measures affect the rights and freedoms of expression and information and others protected under Article 20 of the Constitution, they may be decided only by the competent jurisdictional bodies.

Suspension shall consist of the impossibility of using the domain name for the purposes of Internet routing and a prohibition on altering the ownership and registration data of said domain, although new contact information may be added. The owner of the domain name may only renew said name or alter the method of renewal. The precautionary suspension shall continue until it has been lifted or it has been confirmed in a binding ruling that orders the cancellation of the domain name.

Cancellation shall have the same effects as suspension until the expiry of the registration period and, if the remaining time is less than one year, for one additional year, after which the domain name may be reassigned."

Fifteen. A new additional provision, eight, is introduced with the following content:

Additional provision eight. *Cooperation of the domain name registers established in Spain in the fight against illegal activities.*

1. The domain name registers established in Spain shall be subject to the terms of additional provision six, section five bis, in regard to the domain names that they assign.

2. The domain name registration entities established in Spain shall be obliged to provide the information on the owners of domain names requested by the public authorities in the exercise of their powers of inspection, monitoring and sanction when the administrative contraventions that they are investigating have a direct relationship with the activity of an Internet site identified with the domain names assigned.

Such information shall also be provided when it is required for the investigation and mitigation of cyber-security incidents in which equipment related to a domain name under its management is involved. Said information shall be provided to the body, organisation or entity that is determined by legislation or regulation.

In both cases, the request must be made in writing with a justification and detail the information requested and the necessity and proportionality of the information requested for the purposes sought. If the information demanded is personal information, its transfer shall not require the consent of its owner."

Sixteen. A new ninth additional provision is introduced with the following content:

"Ninth additional provision. *Managing cyber-security incidents that affect the Internet.*

1. Information society service providers, domain names registries and registration agents that are established in Spain are obliged to cooperate with the competent CERT (Computer Emergency Response Team) to resolve cyber-security incidents that affect the Internet and to act on the security recommendations given or that are laid down in the codes of conduct deriving from this Law.

The bodies, public agencies or any other public sector entity that manage security incident response equipment shall cooperate with the competent authorities to contribute the technical evidence required to prosecute the contraventions arising from said cyber-security incidents.

2. To exercise the aforementioned duties and obligations, information society service providers, while respecting the secrecy of communications, shall supply the information required to the competent CERT, and the competent authorities, for the proper management of the cyber-security incidents, including the IP addresses that may be compromised or implicated in said incidents.

Similarly, the bodies, public agencies or any other public sector entity that manages security incident response equipment may exchange information related to cyber-security incidents with other CERTs or competent authorities at the national or international level, as long as said information is required to prevent incidents within its scope of action.

3. The Government shall institute, within six months, a programme to promote a public-private cooperation scheme with the aim of identifying and mitigating cyber-security attacks and incidents that affect the Internet in Spain. To do so, they shall draw up codes of conduct in regard to cyber-security, applicable to the different information society service providers, and to the domain name registers and registration agents in Spain.

The codes of conduct shall determine the set of rules, measures and recommendations to be implemented that makes it possible to ensure the efficient and effective management of said cyber-security incidents, the cooperation system and the conditions for membership and implementation, and the procedures for analysing and reviewing the resulting initiatives.

The office of the Secretary of State for Telecommunications and the Information Society shall coordinate the actions that are instituted arising from these codes of conduct.

4. In accordance with the codes of conduct that are defined, in particular, information society service providers must identify the users affected by the cyber-security incidents notified to them by the competent CERT, and must indicate to them the actions that they must carry out and that are their responsibility, as well as the time frames for the actions. In any case, information shall be provided to them on the harm that they could suffer or cause to third parties if they do not cooperate in solving the cyber-security incidents referred to this provision.

Should the users not exercise their responsibility in the recommended time in regard to the disinfection or removal of the elements causing the cyber-security incident, the service providers must, at the request of the competent CERT, isolate said equipment or service from the network, thereby preventing negative effects on third parties until the end of the malicious activity.

The preceding paragraph shall be applicable to any equipment or service geographically located in Spain or that operates under an ".es" domain name or any others for which there is a register in Spain

5. It shall be determined by law which bodies, public agencies or any other public sector entity shall exercise the duties of a security incident response team or CERT with the powers for the purposes of the terms in this provision.

6. The office of the Secretary of State for Telecommunications and the Information Society shall guarantee a smooth flow of information with the office of the Secretary of State for Security of the Ministry of the Interior regarding incidents, threats and vulnerabilities pursuant to Law 8/2011 of 28 April establishing measures for the Protection of Critical Infrastructure. Coordination mechanisms shall therefore be set up between both bodies to guarantee the provision of a coordinated response to incidents within the framework of this Law."

Third final provision. *Amendment to Law 38/1999 of 5 November on the regulation of building construction.*

An eighth additional provision is introduced into Law 38/1999, of 5 November, on the regulation of building construction.

Eighth additional provision. *Installation of network infrastructure or radio stations in buildings in the private domain.*

The work of installing network or radio station infrastructure in buildings in the private domain shall not require a building or construction permit or any other authorisation, although, in every case, the developer of said infrastructure must submit to the authority with powers over construction work a formal statement certifying that the work will be done in accordance with a plan or technical report signed by a competent technician, as appropriate, justifying its compliance with the applicable requirements in the Technical Building Code. After carrying out and completing the work of installing the electronic communications network infrastructure, the developer must submit to the competent authority a communication that construction has been completed and that it was performed in accordance with the technical project or technical report."

Fourth final provision. *Amendment to Law 25/2007 of 18 October on the storage of data relating to electronic communications and public communications networks.*

Law 25/2007 of 18 October on the preservation of data related to electronic communications and public communications networks, is amended as follows:

One. Article 6, section 2 is amended and now reads as follows:

"2. The information shall be transferred in electronic format only to the authorised officials and must be limited to the information that is essential for achieving the ends indicated in Article 1.

For these purposes, the following shall be considered authorised officials:

- a) Members of the Law Enforcement Agencies, when they are performing judicial police duties, pursuant to Article 547 of Organic Law 6/1985 of 1 July on the Judiciary.
- b) Officials from the Sub-Directorate-General for Customs Supervision, when exercising their powers as judicial police, pursuant to Article 283, section 1 of the Criminal Procedure Act.
- c) The staff of the National Intelligence Centre in the course of security investigations of people or entities, pursuant to Law 11/2002 of 6 May regulating the National Intelligence Centre and Organic Law 2/2002 of 6 May regulating the ex ante judicial control of the National Intelligence Centre.

Two. Article 7, section 3 is amended and now reads as follows:

"3. The time frame for executing the release order shall be set in the legal judgement, taking into account the urgency of the transfer and the purposes of the investigation in question, as well as the nature and technical complexity of the operation.

If no other, different time frame is set, the release must take place within seven calendar days calculated as of 8:00 hours on the calendar day following that on which the legally bound party receives the order."

Three. Article 10 is amended and now reads as follows:

"Article 10. *Infractions and sanctions.*

1. The following constitute contraventions pursuant to this Law:

- a) Not preserving at any time the data referred to in Article 3 is a very serious contravention.
- b) The following are considered serious contraventions:

- i) Repeatedly or systematically not preserving the data referred to in Article 3.
 - ii) Preserving the data for a shorter period than that laid down in Article 5.
 - iii) Deliberate failure to comply with the obligations of data protection and security laid down in Article 8.

c) The following are considered minor contraventions:

- i) Not preserving the data referred to in Article 3 when this is not classified as being a very serious or serious contravention.
 - ii) Deliberate failure to comply with the obligations of data protection and security laid down in Article 8, when it is not classified as a serious contravention.

2. The sanctions scheme laid down in the General Telecommunications Act shall be applicable to the contraventions shown in the preceding section, except for those in sections 1.b).iii and 1.c).ii of this Article. The disciplinary power shall correspond to the office of the Secretary of State for Telecommunications and the Information Society, without prejudice to the criminal liabilities that could arise from failing to comply with the obligation to release data to authorised officials.

The proceedings for sanctioning the above-mentioned contraventions shall be initiated with the approval of the Secretary of State for Telecommunications and the Information Society, while the Ministry of the Interior may instigate the initiation of said proceedings.

In all cases, a mandatory, decisive report to resolve the disciplinary proceedings must be received from the Ministry of the Interior.

3. The sanctions scheme laid down in the General Telecommunications Act shall be applicable to the contraventions shown in sections 1.b).iii and 1.c).ii of this Article; the disciplinary powers shall correspond to the Spanish Data Protection Agency."

Four. Section 5 of the sole additional provision is amended and now reads as follows:

In addition to those shown in Article 10, the following constitute contraventions pursuant to this provision:

- a) Failure to comply with the keeping of the aforementioned record-book is a very serious contravention.
- b) The repeated or systematic incomplete keeping of said record-book and deliberate failure to comply with the release and handing over of data to the persons and in the cases

laid down in this provision are serious contraventions.

c) The incomplete keeping of the record-book or failure to comply with releasing and handing over data to the persons and in the cases laid down in this provision, when they are not classified as being very serious or serious contraventions.

Fifth final provision. *Amendment to Royal Decree-Law 1/1998 of 27 February on common infrastructure in buildings for access to telecommunications services.*

Article 3, section 1 of Royal Decree-Law 1/1998, of 27 February, on common infrastructure in buildings for access to telecommunications services is amended and now reads as follows:

"1. As of the date of the entry into effect of this Royal Decree-law, no permit shall be granted for the construction of or overall refurbishment of any building among those mentioned in Article 2, if the corresponding architectural plan is not accompanied by one containing the installation of its common infrastructure. This infrastructure must fulfil the appropriate technical conditions, meeting at least the functions given in Article 1.2 of this Royal Decree-law, without prejudice to those that are laid down in the regulations that are issued at any time to implement it.

The installation of the infrastructure regulated in this Royal Decree-law must have its respective technical project, signed by someone who is in possession of an official university degree in engineering, technical engineering, a master's or undergraduate degree that offers the skills in this matter due to the curriculum for that degree.

The minimum content that said technical project must contain shall be determined in a Royal Decree.

Sixth final provision. *Amendment to Law 59/2003 of 19 December on electronic signatures.*

Article 8.2 of Law 59/2003, of 19 December, on electronic signatures, now reads as follows:

"2. The validity of electronic certificates shall match the characteristics and technology used to generate the data on the creation of the signature. In the case of recognised certificates, this period may not be more than five years."

Seventh final provision. *Amendment to Law 7/2010 of 31 March, the General Audiovisual Communications Act.*

Law 7/2010 of 31 March, the General Audiovisual Communications Act, is amended as follows:

One. Article 5, section 2, paragraph one now reads as follows:

"2. For this right to be effective, the providers of a television communications service with national or Autonomous Community coverage must reserve 51 percent of the annual programme broadcasting time for European works. In turn, 50 percent of this quota is reserved for European works in any of the languages of Spain. In all cases, 10 per cent of broadcasting time shall be reserved for European works from producers other than the service provider and half of this 10 percent must have been produced in the last five years. The broadcasting time to which this number refers shall be calculated excluding the news, sports events, games, advertising, teletext and telemarketing services."

Two. Article 17 is amended and now reads as follows:

"1. Audiovisual communication service providers are entitled to use product placement in the form of feature films, short films, documentaries, made-for-television films and series, sports programmes and entertainment programmes for due consideration.

In the cases where no payment occurs, only the supply of certain goods or services free of charge, such as material assistance with production or prizes, with the intention of their being included in a programme, this shall only constitute product placement and shall therefore be permitted, as long as these goods or services have a significant value.

2. When the programme has been produced or commissioned by the service provider or one of its subsidiaries, the public must be clearly informed of the product placement at the beginning and end of the programme, and when it restarts after a commercial break.

3. The placement may not determine the liability or editorial independence of the audiovisual communication service provider. Nor may it directly lead to the purchase or leasing of goods or services, specific promotions for the former or undue prominence for the product.

4. Product placement is forbidden in children's programmes."

Three. Article 38 is amended and now reads as follows:

"Article 38. *Freedom to receive services provided within the European Union.*

1. Freedom is guaranteed throughout the country to receive audiovisual services from owners established in a member state of the European Union, as long as they do not interfere technically with broadcasts from providers established within Spanish jurisdiction. Within the scope of the European Convention on Transfrontier Television and to channel the right to cultural and linguistic diversity at the European level, in all the areas bordering on a European Union country, the broadcasting and reception of programmes broadcast via radio waves shall be made possible and suitable radio spectrum planning guaranteed in cross-border areas.

2. As an exception and pursuant to Article 3 of Directive 2010/13, the competent state audiovisual authority may limit said freedom of reception when audiovisual television services originating in a member state of the European Union seriously and repeatedly violate the provisions of Spanish legislation on the protection of minors or contain incitement to hatred based on race, sex, religion or nationality, as long as those services committed this behaviour at least twice in the immediately preceding twelve months.

In these cases, before adopting limitation measures, the audiovisual authorities must notify the owner of the audiovisual services and the European Commission of the alleged contraventions and the measures that it intends to adopt should another such contravention occur. It shall also initiate consultations with the latter and with the member state in which the owner of the audiovisual services is established with the aim of reaching an amicable settlement

If the consultations with the parties mentioned in the preceding section did not result in a settlement and the contraventions continue, within fifteen days of the notification of said contravention, the measures referred to in paragraph one of this number may be adopted.

In the event of a negative ruling from the Commission, the measures in question must end.

3. In addition, if the audiovisual communication service is requested, the freedom of reception may be proportionally limited for reasons of public order, public safety, public health protection or to protect consumers and investors. In this case, before adopting the measures, the audiovisual authority must request the European Union member state to whose jurisdiction the on-demand service provider is subject to take measures. Should the latter not take them, or they are not sufficient, it shall notify the European Commission and the aforementioned member state of its intention to adopt them.

In cases of emergency, the audiovisual authority may adopt these measures after notifying

the European Commission and the European Union member state to whose jurisdiction the on-demand service provider is subject, giving the reasons for the urgency.

In the event of a negative decision from the Commission, the audiovisual authority must abstain from taking the measures proposed or, where appropriate, it must urgently bring to an end the measures in question.

4. Evidence of the aforementioned measures in the two preceding numbers must be given in the investigation into the corresponding case by the competent state audiovisual authority."

Four. Article 39 is amended and now reads as follows:

"1. Pursuant to Article 4 of Directive 2010/13, the competent state authority may adopt measures to safeguard Spanish legislation, in accordance with the procedure laid down in this Article, when the television audiovisual communication service provider established in another European Union member state targets its service wholly or mainly to Spanish territory and it was set up in that member state to evade stricter Spanish regulations.

In this case, the competent state authority may contact the other, aforementioned member state through a duly reasoned request to find a solution to the problems that is mutually satisfactory.

2. If within two months of the request no satisfactory solution has been reached, the competent state authority may adopt the measures laid down in number one of this Article, as long as they are objectively necessary and they are applied to the objectives sought in a non-discriminatory and proportionate manner.

3. Prior to the adoption of the aforementioned measures, the audiovisual authority must notify the European Commission and the member state in which the television audiovisual communication service provider is established of the draft measures to be applied, which shall be accompanied by the respective justification. The draft measure must be approved by the European Commission and in the event of a negative decision by the former, the audiovisual authority shall abstain from adopting the proposed measures."

Eighth final provision. Regulation of the conditions on which bodies or entities managing state transport infrastructure will allow the occupation of the public domain that they manage and the private property that they own.

For the purposes of the provisions in Articles 29 and 30 of this Law, a joint proposal from the Ministry of Industry, Energy and Tourism and the Ministry of Development shall set, in a Royal Decree adopted by the Council of Ministers, the conditions on which bodies or entities managing state transport infrastructure must permit the exercise of the right to occupy the public domain that they manage and the private property of which they are the owners, by electronic communications network and service operators under the principles of effective access to said assets, the reduction of burdens and administrative simplification, on fair, non-discriminatory, objective and neutral conditions.

Ninth final provision. Constitutional basis

This Law is enacted under the exclusive state power over telecommunications laid down in Article 149.1.21. of the Constitution. The provisions in the Law designed to safeguard the single market in the telecommunications sector are therefore enacted under Article 149.1.1. of the Constitution on the regulation of basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and in the fulfilment of their constitutional duties and the fulfilment of the constitutional rights in Article 149.1.13. of the Constitution on basic rules and the coordination of general economic planning.

Tenth final provision. *Powers of development.*

The Government and the Minister of Industry, Energy and Tourism, pursuant to the provisions in this Law and the scope of their respective powers, may enact the regulations that the implementation and application of this Law require.

Eleventh final provision. *Entry into effect.*

This Law shall come into effect on the day following its publication in the Official State Gazette.

Therefore,

We order all Spaniards, whether individuals or authorities, to abide by this law and ensure that it is observed.

Madrid, 9 May 2014.

JUAN CARLOS R.

The Prime Minister,
MARIANO RAJOY BREY

APPENDIX I

Telecommunications taxes.

1. *General operator tax.*

1. Without prejudice to the economic contribution that may be imposed on the operators to fund the universal service, pursuant to the provisions in Article 25 and Title III, all operators shall be obliged to pay an annual tax that may not exceed 1.5 per thousand of their gross operating income. Said tax shall be destined to cover the expenses arising, including those for management, control and execution, from the application of the legal system laid down in this Law, of the national regulation authorities referred to Article 68.

For the purposes of the provisions in the preceding paragraph, gross income shall be understood to be the total revenue obtained by the operator from operating the networks and providing the electronic communications services included in the scope of application of this Law. Therefore, the revenues corresponding to services provided by an operator that are collected from users as compensation for the services of operators that operate networks or provide electronic communications services shall not be considered gross income.

2. The tax shall accrue on 31 December of each year. However, if for a reason attributable to the operator, the former loses the licence to act as such on a date prior to 31 December, the tax shall accrue on the date on which this circumstance occurs.

3. The amount of this annual tax may not exceed the aforementioned expenses, including those for management, control and execution, that arise from the application of the legal system laid down in this Law.

To this effect, before 30 April each year, the Ministry of Industry, Energy and Tourism shall publish a report containing the expenses that have been incurred in the previous financial year by the national regulation authorities referred to in Article 68 due to the application of the legal system laid down in this Law.

The report shall contain, separately, the expenses incurred by the National Authority on Markets and Competition for the application of the legal system laid down in this Law, which will serve as a basis for setting the Authority's annual allocation from the General State Budgets and for ensuring the sufficiency of the Authority's financial resources for the application of this Law.

The amount of the tax shall result from applying the amount of the expenses incurred in the previous financial year by the national regulation authorities referred to in Article 68 in application of the legal system laid down in this Law that are shown in said report to the percentage that the gross operating incomes of each of the telecommunications operators represent individually out of the total gross operating income obtained in that same financial year by the telecommunications operators.

The system for calculating the expenses incurred by the national regulation authorities referred to in Article 68 due to the application of the legal system laid down in this Law, the system for managing the settlement of this tax and the time frames and requirements that the telecommunications operators must meet to declare to the Ministry of Industry, Energy and Tourism the amount of their gross operating income for the purposes of calculating the amount of the tax that each of the telecommunications operators must pay shall be set in a Royal Decree.

If said declaration is not submitted on time, an order shall be issued to the taxable person and notified in a reliable manner that it should submit the declaration within 10 days. If it does not do so, the managing body shall issue a provisional settlement on the gross operating income calculated under an indirect estimation system pursuant to Article 53 of Law 58/2003, of 17 December, the General Tax Act, including the amount of the penalty and the interest for late payment that are due. The imposition of the penalty shall be as provided for in the aforementioned General Tax Act.

2. *Numbering, routing and naming taxes*

1. The granting of usage rights for numbering, routing and naming constitute a taxable transaction for this tax.

The taxable persons for this tax shall be natural or legal persons that are the recipients of usage rights.

The tax shall accrue on 1 January each year, except for the initial period, when it shall accrue on the date on which the granting of the usage rights occurs.

The procedure for exaction shall be set in a Royal Decree. The amount of said exaction shall be the result of multiplying the number of numbers, addresses or names for which usage rights were granted by the value of each one of them, which may be different depending on the respective services and plans..

In general, the value of each number in the National Telephone Numbering Plan for setting the numbering, routing and naming tax, including for these purposes the numbers used exclusively for providing messaging services over telephone networks, shall be €0.04. The coefficients specified in the following table shall be applied to this value, for the ranges and services shown:

Coefficient	Service	Range (NXYA)	Length (digits)
0	Services of social interest.	0XY, 112, 10YA	3 and 4
0	European harmonised services of social value.	116 A (A = 0 and 1)	6
0	Internal use for each operator.	12YA (YA= 00 – 19) 22YA	Undefined.
2	Messages over telephone networks.	2XYA (X ≠ 2) 3XYA 79YA 99YA	5 and 6
3	Short numbers and prefixes	1XYA (X≠1) 50YA	4, 5 and 6
1	Geographical numbers and geographical voice roaming numbers.	9XYA (X≠0) 8XYA (X≠0)	9
1	Mobile numbers	6XYA 7XYA (X=1, 2, 3, 4)	9
1	Voice roaming numbers.	5XYA (X=1)	9
1	Internet access numbers	908A 909A	9
10	Special rates.	80YA (Y=0, 3, 6, 7) 90YA (Y=0, 1, 2, 5, 7)	9
10	Personal numbers	70YA	9
30	Subscriber number directory enquiries.	118 A (A= 1 – 9)	5
2	Machine to machine communications.	590 A	13

Note: In the column corresponding to the identification of the range, the figures NXYA represent the first four digits of the number dialled. The figures X, Y, A can have any of the values between 0 and 9, unless indicated to the contrary. A dash indicates that the aforementioned digits may have any value between those shown to either side of the dash (including these digits).

The National Telephone Numbering Plan and the provisions implementing it may introduce coefficients to be applied to numbering resources that are allocated subsequent to the entry into effect of this Law, as long as they do not exceed 30, except in the cases in which rights are granted to end-users for the use of 9 digit numbers, in which case the maximum resulting value of the tax may not exceed 100 Euros.

For the purposes of calculating this tax, it shall be understood that all numbers in the National Telephone Numbering Plan, and those used exclusively to provide messaging services over public telephone networks, shall be composed of nine digits. When usage rights are granted for a number with fewer digits, it shall be considered that usage rights are being granted for all the nine-digit

numbers that can be formed while keeping as the first digit the number for which the usage rights are granted. When usage rights are granted for longer numbers, it shall be considered that they are being granted for all nine-digit numbers that can be formed with the first nine numbers of the longer number.

The following numbering, routing and naming taxes are therefore set:

Type of number	Reference regulation	Value of each code (Euros)
International Signalling Point Code (ISPC).	Recommendation ITU-T Q.708.	1,000
National Signalling Point Code (NSPC)	Recommendation ITU-T Q.704.	10
Data network identification code (DNIC).	Recommendation ITU-T X.121	1,000
Tetra mobile network code (MNC).	Recommendation ITU-T E.218.	1,000
Portability network routing number (NRN).	Technical specifications for portability.	1,000
Mobile network code (MNC).	Recommendation ITU-T E.212.	1,000

These new taxes shall be applied, without being retroactive, from 1 January of the year following the adoption of this Law.

The value of the numbering, routing and naming tax shall be set annually in the General State Budgets.

2. Notwithstanding the provisions under the preceding heading, when setting the amount to be paid for said tax, the market value of the use of the numbers and names for which usage rights are granted and the profitability that the recipient person or entity obtains from them, shall be taken into account, pursuant to Article 19.

In this case, in exceptional cases in which this is provided for in the national plans or the provisions implementing them and in the terms set in them, the annual amount of the tax may be replaced by that which results from a bidding process in which an initial benchmark value and the duration of the allocation of the right of use shall be set. If the value of the winning bid is higher than said benchmark value, the latter shall constitute the amount of the tax.

3. The amount of the numbering tax shall be reimbursed in proportion to the amount that corresponds, when the cancellation of the numbering resources allocated occurs at the request of the interested party, during the corresponding financial year. To do so, the procedure laid down in a Royal Decree shall be followed.

4. The amount of the revenues obtained from the tax shall be paid into the Public Treasury and shall be destined to funding the expenses incurred by the General State Administration for managing, controlling and executing the legal system laid down in this Law.

3. *Radio-electric public domain reservation taxes.*

1. The reservation for one or various persons or entities of the private use or special use by operators of any frequency in the public airwaves shall have an annual tax levied, in the terms laid down in this section.

To set the amount to be paid as this tax by those legally bound to pay it, the market value of the use of the reserved frequency and the profit that could be obtained from it by the recipient shall be taken into account.

To set said market value and the possible profit obtained by the recipient of the reserved frequency, the following parameters shall be taken into account, among others:

- a) The degree of use and congestion of the different bands and in different geographical areas.
- b) The type of service for which the reserved frequency is intended to be used and, in particular, if it is linked to public service obligations under Title III.
- c) The band or sub-band of the spectrum that is reserved.

- d) The equipment and technology that are used.
- e) The economic value arising from the use or enjoyment of the reserved public domain.

2. The amount to be paid for this tax shall be the result of multiplying the number of public airwaves units reserved by the value in Euros assigned to a unit. In the island territories, the area to be applied to calculate the radio-electric units that are used to determine the corresponding tax shall be calculated excluding the coverage that has not been requested that extends over the maritime area. For the purposes of the provisions in this section, a reserved radio-electric unit shall be understood to be a conventional pattern of measurement, referring to the potential or actual occupation, for a period of one year, of a bandwidth of one kilohertz over an area of one square kilometre.

3. The amounts of the preceding parameters shall be determined in the General States Budget Act. The reduction in the parameter given under heading 1, paragraph b) of this section for the public airwaves reservation tax, which is determined in the General State Budgets Act, shall be up to 75 percent of the value of said coefficient for electronic communications networks and services that are linked to the public service obligations in Article 25 and 28, sections 1 and 2, of this Law, or for the public domain intended for providing public service through direct or indirect management by administrative concession.

In the law referred to in the preceding paragraph, the following shall therefore be set:

- a) The formula for calculating the number of radio-electric units reserved for the different radio-electric services.
- b) The types of radio-electric services.
- c) The minimum amount to be deposited as the public radio-electric domain reservation tax.

4. The payment of the tax must be made by the holder of the public radio-electric domain reservation. Stations merely for reception that do not have a radio frequency reservation shall be exempted from paying the tax. The amount payable shall be deposited into the Public Treasury.

5. The amount of the tax must be paid annually. It shall accrue initially on the day the licence for the use of the public domain is granted and then, subsequently, on 1 January each year.

6. The procedure for exaction shall be set in a Royal Decree. Failure to pay the tax may lead to the suspension or loss of the right to occupy the public airwaves, except when, in the proceedings for an administrative or contentious-administrative appeal filed against the payment of the tax, it has been ruled that the payment be suspended.

7. The public administrations shall be exempt from paying this tax when the public airwaves is reserved to provide compulsory general interest services that have as their sole object national defence, public safety and emergencies, as well as any other compulsory general interest services with no direct or indirect economic recompense, such as taxes, public or private prices, or other revenues arising from said provision, such as revenues from advertising. To this end, they must basically request said exemption from the Ministry of Industry, Energy and Tourism. Similarly, downstream satellite radio broadcasting links, both sound and television, shall not be subject to payment.

4. *Telecommunications taxes*

1. The precise management of granting certain concessions and licences, registering with registers, issuing certificates, performing compulsory inspections, issuing technical rulings and performing examinations shall give entitlement to the exaction of taxes that compensate the processing and actions required, in accordance with the following paragraphs.

2. A taxable transaction for the tax is constituted by the precise management by the Administration of issuing registration certificates; the submission of a technical project for common

telecommunications infrastructure and the installation certificate or report that covers common telecommunications infrastructure in the interior of buildings; compliance with the technical specifications of telecommunications equipment and apparatus; and the issuing of technical rulings evaluating the compliance of these equipment and apparatuses; registrations in the telecommunications installation company register; inspections or technical checks that, being mandatory, are provided for in this Law or in other provision with a legal ranking or the submission of certificates issued by a competent technician that replace said inspections or checks; the processing of public domain concessions for the private use of the public airwaves and the processing of general or individual licences for the special use of said domain and taking the exams to qualify to operate amateur radio stations.

3. The taxable persons for this tax, depending on the cases, shall be the natural or legal persons that request the corresponding certificate or technical evaluation ruling, submit the corresponding formal statement to the register of telecommunications installation companies; request a certificate of submission for the technical project for common telecommunications infrastructure, certificate of commencement, installation report, and test protocol and, where appropriate, the completion certificate and its appendices; a certificate for performing mandatory inspections or requesting the processing or public domain concessions for the private use of the public airwaves, or the processing of general or individual licences for the special use of the public airwaves; those who take the examinations to obtain the title of amateur radio station operator, and those who submit certificates issued by a competent technician that replace inspections or compulsory checks.

4. The amount of the tax shall be set in the General State Budgets Act. The tax shall accrue at the time of the corresponding application. The returns from the tax shall be deposited into the Public Treasury. The manner of paying the tax shall be set in a Royal Decree.

The performance of tests or trials to check compliance with the technical specifications shall be considered a public price when they are carried out by the interested party, optionally, at centres belonging to the Administration of any member state of the European Union or of Spain or at private centres or one separate from said Administrations, when said tests are requested by the interested party voluntarily without his being obliged to do so by current regulations.

5. Applicants for individual licences for the special use of the public airwaves shall be exempt from the payment of the tax for processing said licences if they reach 65 years of age in the year that the application is made, or have already reached this age, or are recipients of a public pension or have been recognised to have a degree of disability equal to or greater than 33%.

5. Management and collection of taxes during the voluntary period.

The Ministry of Industry, Energy and Tourism shall manage and collect the taxes in this appendix during the voluntary period.

APPENDIX II

Definitions

1. Subscriber: any natural or legal person that has signed a contract with a publicly available electronic communications service provider for the provision of said services

2. Access: making available to another operator, under defined conditions and on an exclusive or non-exclusive basis, resources or services with the purpose of providing electronic communications services, including when they are used to supply information society services or radio broadcast content services. This term includes the following, among other aspects: access to network elements and associated resources that can require the connection of equipment with means that are fixed or not fixed (this particularly includes access to the local loop and to the resources and services need to provide services through the local loop); access to physical infrastructure, such as buildings, conduits and masts; access to the pertinent computer systems,

including operating support systems; access to information systems or data bases for pre-orders, supplies, orders, requests for maintenance and repairs, and billing; access to call number conversion or systems with the equivalent functionality; access to fixed and mobile networks, especially for the purposes of roaming; access to conditional access systems for digital television; and access to private virtual network services.

3. Economic stakeholder: the manufacturer, authorised representative, importer and distributor of telecommunications equipment and apparatus.

a) Distributor: any natural or legal person in the supply chain other than the manufacturer or importer marketing the product.

b) Manufacturer: any natural or legal person that manufactures a product or orders a product to be designed or manufactured and markets it with his name or trademark.

c) Importer: any natural or legal person established in the European Union that introduces a product from a third country into the Community market.

d) Authorised representative: any natural or legal person established in the European Union that has received a written order from a manufacturer to act on the latter's behalf in regard to specific tasks relating to the former's obligations under the corresponding Community regulations.

4. Frequency allocation: the assignment of a frequency band to be used by one or more types of radio communication services, when appropriate, under the conditions that are specified.

5. Frequency assignment: An administrative licence for a radio station to use a certain radio frequency or channel under specific conditions.

6. National Regulation Authority: the Government, ministerial departments, senior and governing bodies and public agencies that, pursuant to this Law, exercise the powers specified herein.

7. Public fixed electronic communications network local loop or subscriber loop: the physical circuit that connects the network termination point to a distribution device or equivalent installation of the public fixed electronic communications network.

8. Consumer: any natural or legal person that uses or requests a publicly available electronic communications service for non-professional purposes.

9. Location data: any datum processed on an electronic communications network or by an electronic communications service that indicates the geographical positioning of the terminal equipment of a user of a publicly available electronic communications service.

10. Exclusive rights: the rights granted to a company by means of a legal, regulatory or administrative instrument that reserves for it the right to provide a service or engage in a certain activity in a specific geographical area.

11. Special rights: the rights granted to a limited number of companies by means of a regulatory or administrative instrument that, in a specific geographical area:

a) Assign or limit, in accordance with criteria that are not objective, proportionate and non-discriminatory, the number of companies authorised to provide a service or engage in a particular activity to two or more, or

b) Grant a company or companies, in accordance with such criteria, legal or regulatory advantages that severely hinder the ability of another company or other companies to provide the same service or engage in the same activity in the same geographical area and in basically similar conditions.

12. Address: a chain or combinations of figures or symbols that identify the specific termination points of a connection and are used for routing.

13. Advanced digital television equipment: decoders to connect televisions or integrated digital televisions capable of receiving interactive digital television services.

14. Terminal equipment: equipment designed to be connected to a public electronic communications network; i.e., to be connected directly to the termination points of said network or to interoperate through it, with the aim of sending, processing or receiving information.

15. Technical specification: the specification that is contained in a document defining the characteristics required of a product, such as quality levels or the properties for its use, safety, dimensions, symbols, tests and testing methods, packaging, marking and labelling. Included in the aforementioned category are the standards applicable to the product in regard to terminology.

16. Radio spectrum: electro-magnetic waves whose frequency is set by convention below 3,000 GHz, that are propagated in space without an artificial guide.

17. Operation of an electronic communications network: creating, using, controlling or making available said network.

18. Interconnection: the physical, logical connection of public communications networks used by the same operator or another different operator so that one operator's users can communicate with the same operator's or another operator's users, or access the services provided by another operator. The services may be provided by the interested parties or by third parties that have access to the network. Interconnection constitutes a particular type of access between the operators of public networks.

19. Application programming interface (API): the software interface between external applications, made available by the radio broadcasting operators or service providers, and digital television advanced equipment resources for digital radio and television services.

20. Harmful interference: all interference that involves a risk to the functioning of a radio navigation system or other safety services or that degrades or seriously obstructs or repeatedly interrupts a radio communication service that operates in accordance with the applicable international, Community or national regulations.

21. Call: a connection established through a publicly available electronic communications service that permits bidirectional voice communication.

22. Name: a combination of characters (decimal figures, letters or symbols) that is used to identify subscribers, users or other entities such as network elements.

23. Number: a chain of decimal figures that, among other things, can represent a name or address.

24. Geographical number: the number identified in the national telephony numbering plan that has as part of its structure a geographical significance used to route calls to the physical location of the network termination point.

25. Non-geographical numbers: numbers identified in the national telephony numbering plan that are not geographical numbers. They include, among others, mobile telephone numbers, freephone numbers and additional rating numbers.

26. Operator: a natural or legal person that operates public electronic communications networks or provides publicly available electronic communications services and has notified the Ministry of Industry, Energy and Tourism of the start of activities or is registered with the Register of operators.

27. Operator with significant market power: an operator that individually or together with others enjoys a position equivalent to a dominant position; i.e., a position of economic strength that permits its behaviour to be, to an appreciable degree, independent of competitors, customers and, in the final instance, consumers who are natural persons.

28. Network termination point: the physical point at which the subscriber accesses a public communications network. When these are networks on which switching or routing operations occur, the network termination point shall be identified by a specific network address, which may be linked to a subscriber number or name

29. Radio communication: all telecommunications transmitted over radio waves.

30. Associated resources: the physical infrastructure, systems, devices, associated services or other resources or elements associated with an electronic communications network or with an electronic communications service that permit or support the provision of services over said network

or through said service or have the potential to do so. They shall include, among others, buildings or the entrances to buildings, cables in buildings, antennas, towers and other support structures, conduits, masts, manholes and distributors.

31. Electronic communications network: the transmission systems and, where appropriate, switching or routing equipment and other resources, including inactive elements that permit signal transport over cables, hertz waves, optical media or other electro-magnetic media, including satellite networks, fixed and mobile terrestrial networks (for circuit and packet switching, including the Internet), electric power line systems, insofar as they are used to transmit signals, networks used for sound and television broadcasting and cable television networks, regardless of the type of information transported.

32. Public communications network: an electronic communications network that is wholly or mainly used to provide publicly available electronic communications services that supports signal transfer between network termination points.

33. Reserved frequencies: A portion of the radio spectrum whose usage rights are granted by the Administration to a natural or legal person under specific conditions.

34. Associated services: the services associated with an electronic communications network or electronic communications service that permit or support the supply of services over said network or by means of said service or has the potential to do so. They include, among others, number translation or systems with the equivalent functionality, conditional access systems and electronic program guides, as well as services such as the identity, location and presence service.

35. Electronic communications service: the service generally provided in exchange for recompense that consists, wholly or mainly, of signal transport over electronic communications networks. It includes telecommunications services and network transmission services used for radio broadcasts, but not the services that supply content transmitted over electronic networks and services or the activities that consist of the exercise of editorial control over said content. Also excluded are the information society services defined in Article 1 of Directive 98/34/ EC that do consist wholly or mainly of signal transport over electronic communications networks.

36. Wide-screen television service: the television service composed, wholly or partially, of programmes produced and edited for viewing in complete wide-screen format. The 16:9 aspect ratio constitutes the reference format for television services of this type.

37. Publicly available telephone service: the service made available to the public for making or receiving, directly or indirectly, national or international calls through one or more numbers in a national or international telephone numbering plan.

38. Conditional access system: any technical measure or technical mechanism that restricts access in an intelligible manner to a protected sound or television broadcasting service for the payment of a tax or another form of individual, prior authorisation.

39. Telecommunications: any transmission, emission or reception of signs, signals, messages, images, sounds or information of any kind by wire, radio frequency, optical media or other electromagnetic systems.

40. Public pay telephone: telephone available to the general public for the use of which coins, credit/debit cards or prepaid cards, including cards that use dialling codes, can be used as the means of payment.

41. User: a natural or legal person that uses or requests a publicly available electronic communications service.

42. End-user: a user that does not operate public communications networks or provide publicly available electronic communications services or resell them.

