

## **ELECTRONIC COMMUNICATIONS LAW**

### **I GENERAL PROVISIONS**

#### ***Scope of the Law***

##### ***Article 1***

This Law governs the terms and manner of performing the activities in the electronic communications sector; powers of the government authorities in the electronic communications sector; the status and operation of the Republic Agency for Electronic Communications; fees; public consultation procedures in the electronic communications sector; performing electronic communications activities according to the general authorisation regime; design, construction or installation, use and maintenance of electronic communications networks, associated facilities, electronic communications equipment and terminal equipment; the official prerogative and common use; interconnection and access; universal service provision; identification of markets susceptible to *ex ante* regulation; market analysis; designation of operators with significant market power (hereinafter: operator with SMP) and the Agency's regulatory competencies related to operators with SMP; management and use of addresses and numbers (hereinafter: numbering); radio-frequency spectrum management, use and monitoring; media content distribution and broadcasting; protection of rights of users and subscribers; security and integrity of electronic communications networks and services; protection of privacy within the sector of electronic communications; lawful interception and data retention; supervision over the enforcement of this Law; penalties for actions contrary to the provisions of this Law and other issues of relevance to the functioning and development of electronic communications in the Republic of Serbia.

##### ***Article 2***

The provisions of this Law do not refer to special-purpose electronic communications networks, with the exception of the provisions referring to the use of special-purpose radio-frequencies and special cases of interconnections between special-purpose electronic communications networks and public communications networks.

#### ***The Objectives and Principles of Regulating the Electronic Communications Sector***

##### ***Article 3***

The objectives and principles of regulating the relations within the electronic communications sector are based on:

- 1) providing conditions for the development of electronic communications on the entire territory of the Republic of Serbia;
- 2) ensuring the predictability of business environment and equal conditions for all operators;
- 3) harmonising activities in the electronic communications sector with national and international standards,
- 4) ensuring the availability of the universal service to all citizens of the Republic of Serbia and meeting the needs of specific social groups, including persons with disabilities, the elderly and socially vulnerable users;
- 5) ensuring interconnection between electronic communications networks and services, i.e. operators, on equal and mutually acceptable terms;
- 6) promoting competition, efficiency and effectiveness in performing activities in the electronic communications sector;

- 7) promoting rational and efficient use of numbering and radio-frequency spectrum;
- 8) ensuring maximum benefits to users of electronic communications, including persons with disabilities, the elderly and socially vulnerable users, especially regarding the choice, price and quality of services;
- 9) ensuring high level protection of user rights, especially by providing clear and complete information on prices, conditions of access and use (including restrictions) the required quality of service, and effective action upon complaints filed against operators;
- 10) ensuring continuous improvement of quality of electronic communications services;
- 11) enabling the end-users of public communications networks and services to have free access to and distribution of information and to use applications and services of their choice;
- 12) ensuring high level of protection of personal data and user privacy, in accordance with the Law on the Protection of Personal Data and other laws;
- 13) ensuring the security and integrity of public communications networks and services.

### ***Definitions of Terms***

#### ***Article 4***

Certain terms used in this Law shall have the following meaning:

- 1) ***address*** is a sequence of signs, letters, digits and signals intended to determine the destination of a connection;
- 2) ***application programming interface (API)*** is a software interface between the applications of media content providers and devices for receiving the content;
- 3) ***media content*** includes radio and television programmes, i.e. audio-visual contents and related interactive services distributed and broadcast, i.e. offered to users via electronic communications networks, based on programme plan or at users' request;
- 4) ***electronic communications activity*** includes constructing or installing, maintaining, using and renting public communications networks and related assets, as well as providing publicly available electronic communications services;
- 5) ***numbers*** are series of digits used for addressing in electronic communications networks;
- 6) ***electromagnetic compatibility (EMC)*** is the ability of a device or system to function satisfactorily in its electromagnetic environment without causing harmful electromagnetic interference to other equipment or systems in that environment;
- 7) ***electronic communications network***: transmission systems and, if applicable, switching and routing devices and other resources, including passive network elements which enable the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (with circuit and packet switching, including Internet) and mobile networks, parts of electric power cable systems used for signal transmission, networks used for distribution and broadcasting of media content, regardless of the nature of transmitted data and media;
- 8) ***special-purpose electronic communications networks*** are electronic communications networks of the defence and security affairs authorities and Security-Information Agency (hereinafter: defence and security authorities), state administration agencies in charge of protection and rescue services, and emergency services (hereinafter: emergency services), which are used for the purposes the institutions in question have been founded for and are not to be used for commercial purposes nor given to third parties;
- 9) ***electronic communications equipment*** is the equipment used for electronic communications activities;
- 10) ***electronic communications service*** is a service which is commonly provided for a charge and which consists entirely or mostly of the transfer of data via electronic communications networks, including telecommunications services and the service of distribution and broadcasting of media content, but it does not include media content service provision or editorial control of media content transmitted over electronic communications networks and services, nor does it include

information society services which do not entirely or mostly consist of transmission of signals via electronic communications networks;

11) **electronic mail**: any text, voice, audio or image recording sent via public communications network that can be stored within the network or recipient's terminal equipment until accessed or collected by the recipient;

12) **electronic programme guide** is an additional digital media content transmission service enabling each user to browse available programme contents and services;

13) **geographic code** is a code from the national Numbering Plan, where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;

14) **interface** is a physical or logical connection between two or more devices, two or more parts of the same device or transmission media, defined by functional characteristics, signal characteristics or other relevant characteristics;

15) **Internet** is a global electronic communications system consisting of a large number of interconnected computer networks and devices exchanging information by using a common set of communication protocols;

16) **interoperability** is a capability of two or more systems or their parts to exchange data and use the exchanged data;

17) **carrier selection** is a service which enables subscribers to establish specific types of connections within the scope of public telephone services by selecting the service provider to mediate in the establishment of connection. Carrier selection may be programmed in advance, realized by dialling the operator selection code or by using another applicable technical procedure;

18) **public communications network** is an electronic communications network which is completely or mostly used for the provision of publicly available electronic communications services, enabling data transmission between network termination points;

19) **public telephone network** is an electronic communications network used for the provision of publicly available telephone services, enabling voice and data transmission between network termination points;

20) **public pay telephone** is a telephone available to the general public and is subject to charges;

21) **publicly available telephone service** is an electronic communications service available to the public for direct or indirect origination and reception of local, national and international calls via one or more numbers from national or international Numbering Plans;

22) **co-location** is a service of offering physical space and technical resources at a certain location, necessary for the accommodation and interconnection of electronic communications equipment of an operator;

23) **communication** is the exchange or transmission of information between a certain number of persons via publicly available electronic communications services, with the exception of information transmitted within services of public programme broadcasting via electronic communications networks which cannot be connected to a certain subscriber or user and/or recipient;

24) **user** is a legal or natural entity who uses or requires a publicly available electronic communications service;

25) **end user** is a user who is not engaged in the electronic communications sector;

26) **local loop** is a physical circuit connecting a network termination point to the main exchange or equivalent facility within the public fixed electronic communications network;

27) **interconnection** is a special kind of access realized between the operators of public communications networks which establishes physical and logical interconnections between public communications networks of one or more different operators in order to enable the users of one operator to communicate with both the users of the same operator and the users of other operators

and/or to access services provided by other operators or third parties who have access to the network;

28) **multiplex** is a signal created by combining a number of signals into one common signal in order to ensure simpler, more efficient and better-protected transmission via electronic communications network;

29) **non-geographic code** is a number from the national Numbering Plan other than a geographic number, such as, among others, mobile network number, free phone and single access service number and value added service number;

30) **operator** is an entity which performs or is authorized to perform activities within the electronic communications sector;

31) **general authorisation** refers to performing activities within the electronic communications sector in compliance with the general conditions prescribed for all or certain types of electronic communications networks and services, pursuant to the provisions of this Law;

32) **traffic data** refer to any data processed for the purpose of conveyance of communication on an electronic communications network or for the billing thereof;

33) **location data**: any data which indicate current or permanent geographic position of the user terminal equipment within an electronic communications network;

34) **consumer** is a physical entity who uses or requires publicly available electronic communications service for personal needs that mostly do not refer to business operations, profession or trade;

35) **number portability** is the possibility provided to the subscribers to change the operators of electronic communications services, without changing their subscriber number;

36) **operator pre-selection** is a service which enables subscribers to establish specific types of connections within the scope of publicly available telephone services through a pre-selected operator that mediates in the establishment of the connection, without dialling the operator selection code or by using another applicable technical procedure;

37) **ex ante regulation** refers to determining the special conditions under which operators with significant market power must carry out their activities within the electronic communications sector, in order to ensure competition and market growth;

38) **access** is the making available of equipment and/or services to other operators, under certain conditions, on either exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including services for the provision of information society services or media content. It includes, among others, the access to network elements and associated facilities that might include connecting equipment through fixed or wireless connections (especially access to the local loop, and equipment and services necessary for the provision of services via local loop), access to the physical infrastructure (including buildings, cable ducts and antenna posts), access to software systems (including systems for operational support), access to information systems and databases for service ordering, provision, maintaining, billing and invoicing, access to number translation systems or systems with identical functionality, access to fixed and mobile networks (especially for the purpose of roaming services), conditional access systems and access to virtual network services;

39) **associated facilities** include related services, physical infrastructure and other assets or elements connected with an electronic communications network or electronic communications service, enabling or supporting service provision via that network or service: among others, buildings or building entrances, cable ducts and lines in buildings, antennas, towers and other supporting facilities, conducting pipes and channels, posts, manholes and cabinets;

40) **related services** include services connected to an electronic communications network or electronic communications service, which enable or support service provision via that network or service, or which can be used for these purposes, including, among others, number translation systems or systems with identical functionality, conditional access systems and electronic

programme guides, and other services, such as services based on data on user identity, location and availability;

41) **subscriber** is any natural or legal entity who or which is a party to a contract with an operator of publicly available electronic communications services for the supply of such services;

42) **radio-frequency spectrum** is a radio-frequency band defined by its delimiting frequencies, 9 kHz to 3000 GHz;

43) **radio-frequency band** is a portion of the radio-frequency spectrum defined by its delimiting frequencies;

44) **radio station**: one or more transmitters and/or receivers, including one or more antennas and other equipment, installed at a certain location in order to transmit a radio signal;

45) **unbundled access to local loop** refers to the completely unbundled access to the local loop and shared access to the local loop, without the change in the local loop ownership structure;

46) **completely unbundled access to local loop** means allowing an operator to use the full capacity of the local loop of an operator with significant market power;

47) **shared access to local loop** means allowing an operator to use a certain portion of the capacity of the local loop (for instance, a certain frequency band) of an operator with significant market power;

48) **conditional access system**: any technical measure or arrangement whereby access to the protected media content and services is made conditional upon subscription or other form of prior individual authorisation;

49) **call**: a connection established by means of a publicly available telephone service allowing two-way communication in real time;

50) **terminal equipment**: a product or a component thereof which enables communication and is intended to be connected directly or indirectly to a relevant point in the electronic communications network;

51) **network terminal point** is a physical point where a user accesses a public communications network, or, in networks which use switching or routing, the point uniquely determined by a network address, which can be related to a number or name;

52) **universal service** is a basic set of electronic communications services of specified quality and scope available to all citizens of the Republic of Serbia at affordable prices;

53) **value added service** upgrades or extends a basic electronic communications service; it may include processing of subscriber or location data and is charged together with or separately from the basic service;

54) **harmful interference** is an unwanted signal which degrades the quality of transmission, obstructs, interrupts or endangers the functioning of a radiocommunications service operating in compliance with relevant regulations.

## II. COMPETENCIES OF GOVERNMENT AUTHORITIES IN THE ELECTRONIC COMMUNICATIONS SECTOR

### Article 5

At the proposal of the ministry responsible for telecommunications and information society (hereinafter: the Ministry), the Government shall:

1) define the electronic communications policy;

2) adopt strategic documents and action plans for their implementation and establish the principles, goals and priorities of electronic communications development in the Republic of Serbia;

3) adopt decisions on other issues as prescribed by this Law.

Relevant authorities of the autonomous province shall participate in the drafting of regulations referred to in paragraphs 1) and 2) of this Article.

#### ***Article 6***

Pursuant to the Law, the Ministry shall:

- 1) supervise the implementation of this Law and the regulations adopted pursuant to this Law;
- 2) represent the Republic of Serbia in international organisations and institutions in the electronic communications sector and be responsible for the implementation of international agreements in the electronic communications sector;
- 3) contribute to the harmonisation of the national legislation in the electronic communications sector with the relevant regulations of the European Union;
- 4) take measures to promote investments in the electronic communications sector and use of information and communications technologies;
- 5) take measures to promote research and development in the electronic communications sector, in cooperation with the ministry responsible for the development and promotion of scientific and research activities;
- 6) make decisions on other issues as prescribed by this Law.

### **III REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS**

#### ***Legal Status***

#### ***Article 7***

The Republic Agency for Electronic Communications (hereinafter: the Agency) founded pursuant to this Law, is an autonomous organization with the status of a legal entity which exercises public authorities in order to effectively implement the established electronic communications policy, promote competition in the sphere of electronic communications networks and services, enhance their capacity and/or quality, contribute to the development of electronic communications market and protect the interests of users of electronic communications services, in accordance with this Law and the by-laws adopted pursuant to this Law.

The Agency is functionally and financially independent of government authorities, organizations and entities engaged in the electronic communications sector.

The Agency shall operate pursuant to the provisions pertinent to public agencies.

The Ministry shall supervise the lawfulness and appropriateness of functioning of the Agency in performing the entrusted duties.

The Agency may commission other national or foreign legal or physical entities to carry out certain expert activities from within its competences.

Functioning and internal organization of the Agency shall be governed by the Statute adopted by the Managing Board of the Agency.

The Statute of the Agency shall be subject to approval of the Government.

#### ***Competencies***

#### ***Article 8***

Pursuant to the Law, the Agency shall:

- 1) adopt by-laws;
- 2) decide on the rights and obligations of operators and users;

3) cooperate with agencies and organizations in charge of broadcasting, competition protection, consumer protection, personal data protection and other agencies and organizations on issues relevant for the electronic communications sector;

4) cooperate with the relevant regulatory and expert bodies of the European Union Member States and other states for the purpose of harmonizing the practice of implementing the electronic communications sector regulations and promoting the development of cross- border electronic communications networks and services;

5) participate in the work of international organizations and institutions within the electronic communications sector in the capacity of the national regulatory authority within the electronic communications sector;

6) perform other activities in accordance with this Law.

### ***Bodies of the Agency***

#### ***Article 9***

The bodies of the Agency shall include the Managing Board and the Director.

### ***Managing Board of the Agency***

#### ***Article 10***

The Managing Board of the Agency (hereinafter: the MB) shall consist of five members, including the Chairperson and the Deputy Chairperson.

At the proposal of the Government, the National Assembly of the Republic of Serbia (hereinafter: the National Assembly) shall appoint and relieve from office the Chairperson, Deputy Chairperson and the members of the Managing Board, on the basis of the public call for appointment of MB members and in accordance with the provisions of this Law.

The MB members shall be appointed to the term of office of 5 years.

The same person may be reappointed MB member up to two times.

### ***Scope of Activities of the Managing Board***

#### ***Article 11***

Pursuant to the Law, the Managing Board of the Agency shall:

1) adopt the annual Framework Business Plan of the Agency, in accordance with the strategic documents and action plans within the electronic communications sector, not later than at the end of the current year for the following year;

2) adopt other by-laws prescribed by this Law;

3) perform other activities which are not included within the scope of responsibilities of the Director according to this Law or the Statute of the Agency.

### ***Operation of the Managing Board***

#### ***Article 12***

The Managing Board shall adopt decisions by means of a majority vote of all members, unless otherwise stipulated by this Law and the Statute.

The Managing Board shall adopt the Statute of the Agency.

MB Chairperson shall manage the work of the MB and perform other duties as stipulated by this Law and the Statute of the Agency.

The Managing Board shall adopt its Rules of procedure.

The MB members shall be entitled to remuneration for their work in the Managing Board which shall be stipulated in accordance with the Statute of the Agency and subject to approval of the Government.

***Conditions for the Appointment of MB members***

***Article 13***

The MB members shall be appointed from among the ranks of reputable and highly respected experts holding academic degrees in the areas of relevance for the activities of the Agency, in particular within the field of electronic communications, economics and law, and shall have significant and recognised achievements or practice in the field of electronic communications.

Three MB members must be electronic communications experts.

***The Procedure for the Appointment of MB members***

***Article 14***

The Ministry shall announce a public call for appointment of MB members referred to in Article 10, paragraph 2, of this Law at least 180 days prior to the expiry of the term of office of the MB members, or immediately after the expiry of their term of office as referred to in Article 15, paragraph 1, item 2-4 of this Law.

The public call announcement shall be published in the *Official Gazette of the Republic of Serbia* and on the Government's, Ministry's and Agency's websites.

The announcement of the public call for the appointment of MB members shall include:

- 1) requirements that candidates must meet for the appointment as MB members as referred to in Article 13, paragraph 1, of this Law;
- 2) evidence to be provided in support of the application;
- 3) deadline for the submission of applications;
- 4) the manner of submission of applications;
- 5) time within which candidates shall be notified of the start of the election process;
- 6) information about the election process;
- 7) name of a person designated to give information about the public call for the appointment of MB members;
- 8) other information of relevance for the appointment procedure.

The applications shall be submitted to the Ministry within 30 days from the date of the announcement of the public call for the appointment of MB members in the *Official Gazette of the Republic of Serbia*.

The Government shall, within 30 days from the expiry of the deadline referred to in paragraph 4 of this Article, compose a list of applicants for the appointment of the Chairperson, Deputy Chairperson and members of the MB who meet the election criteria, observing the requirements stipulated under Article 13 of this Law and submit it to the National Assembly.

In deciding on the election of MB members, the National Assembly shall observe the requirements referred to under Article 13 of this Law.

In case the National Assembly fails to elect all members of MB, the procedure shall be repeated for the vacant posts.

***Termination of the Term of Office of an MB member***

***Article 15***

The term of office of an MB member may be terminated in the following cases:



- 1) expiry of the term to which they have been appointed;
- 2) resignation in writing submitted to the Assembly;
- 3) relief from office for the reasons stipulated under this Law;
- 4) death.

***Relief from Office of an MB member***

***Article 16***

At its own initiative or upon proposal of the Government, the National Assembly may relieve an MB member from office if:

- 1) it is established that, in the process of applying for appointment to the MB, the candidate provided incorrect data or omitted to provide data that was relevant to his/her candidature;
- 2) it is established that during the term of his/her office he/she has violated the rules on conflict of interest and incompatibility of functions stipulated by the law which regulates the prevention of conflict of interests in executing public offices;
- 3) an illness or any other reason makes him/her unable to perform his/her duties for a period exceeding six consecutive months;
- 4) he/she refuses or fails to perform the duties of a member of the Managing Board without reasonable cause for a minimum of three consecutive months or for a minimum of six months with interruptions in the course of a year;
- 5) he/she makes it difficult or impossible for the Agency to perform its activities by unconscientious or improper work, causes major damage to the Agency, acts contrary to this Law and the by-laws adopted pursuant to this Law or neglects or unconscientiously performs his/her duties so that major hindrances to the activities of the Agency are or may be caused;
- 6) he/she has been deprived of legal capacity;
- 7) he/she has been sentenced by a final court decision to a prison term exceeding six months or charged with a criminal offence of abusing official powers, fraud, corruption, theft, forgery or other similar criminal offence, which has made him/her unworthy of performing his/her function.

***The Director of the Agency***

***Article 17***

The Director shall be responsible for the lawfulness of the work of the Agency, he/she shall represent and act on behalf of the Agency, manage the activities and business operations of the Agency, decide on the rights, obligations and responsibilities of the Agency's employees, prepare and implement decisions of the MB and perform other tasks specified in this Law or special laws and in the Statute of the Agency.

Pursuant to the provisions of this Law, the Director shall be appointed and relieved from office by the Managing Board following the completion of the procedure for the appointment of the Director.

The Director shall be appointed to a term of five years and may be reappointed.

The Director shall be permanently employed in the Agency during his/her term of office.

The Director shall be held responsible for his/her work by the MB, and shall submit annual and periodical reports to the MB.

With the prior approval of the Managing Board, the Director shall adopt a by-law regulating the internal organization and job classification in the Agency.

***Director Appointment Requirements***

***Article 18***

A person to be elected for the Director of the Agency shall meet the same requirements as the ones pertinent to the appointment of the members of the Managing Board of the Agency and shall have at least five years of working experience in one or more areas falling within the scope of the activities of the Agency.

***The Director Appointing Procedure***

***Article 19***

The Managing Board shall announce the public call for the appointment of the Director referred to in Article 17, paragraph 2 of this Law and shall have the announcement published in the Official Gazette of the Republic of Serbia and on the Agency's website.

The announcement of the public call for the appointment shall include:

- 1) requirements the candidates must meet in order to be appointed as to referred to in Article 18 of this Law;
- 2) evidence to be provided in support of the application;
- 3) deadline for the submission of applications;
- 4) the manner of submission of applications;
- 5) time within which the candidates shall be notified about the start of the election process;
- 6) information about the election process;
- 7) name of a person designated to give information about the public call for appointment;
- 8) other information of relevance for the appointment procedure.

The application for the participation in the appointment procedure shall be submitted to the Agency within 30 days from the announcement of the public call in the Official Gazette of the Republic of Serbia.

The Managing Board shall compose a list of candidates who meet the requirements for the appointment within 30 days following the expiry of the deadline referred to in paragraph 3 of this Article.

The Managing Board shall select the Director from the list referred to in paragraph 4 of this Article.

The Managing Board shall provide a decision on the election of the Director to all candidates who have applied for the public call for appointment.

If none of the candidates meet the requirements set out in the public call for appointment, the entire procedure shall be repeated.

***Termination of the Director's Term of Office***

***Article 20***

The term of office of the Director may be terminated in the following cases:

- 1) expiry of the term to which he/she has been appointed;
- 2) relief from office for the reasons stipulated by this Law;
- 3) cancellation of employment contract according to the law governing labour relations;
- 4) dismissal for reasons prescribed by this Law;
- 5) death.

***Relief from Director's Office***

***Article 21***

The Managing Board shall relieve the Director prior to the expiry of his/her term of office if:

- 1) it is established that, in the process of applying for the appointment, he/she provided incorrect data or omitted to provide data that was relevant to his/her appointment;
- 2) it is established that during the term of his/her office he/she has violated the rules on conflict of interest and incompatibility of functions stipulated by the law which regulates the prevention of conflict of interests in executing public offices;
- 3) an illness or any other reason makes him/her unable to perform his/her duties for a period exceeding six consecutive months;
- 4) he/she fails to submit annual or periodical reports to the Managing Board in a timely manner, as stipulated by this Law;
- 5) if he/she disposes of the Agency's funds contrary to the adopted financial plan;
- 6) he/she makes it difficult or impossible for the Agency to perform its activities by unconscientious or improper work, causes a major damage to the Agency, acts contrary to this Law and the by-laws adopted pursuant to this Law or neglects or unconscientiously performs his/her duties so that major hindrances to the activities of the Agency are or may be caused;
- 7) he/she has been deprived of legal capacity;
- 8) he/she has been sentenced by a final court decision to a prison term exceeding six months or charged with a criminal offence of abusing official powers, fraud, corruption, theft, forgery or other similar criminal offence, which has made him/her unworthy of performing his/her function.

***Decisions on the Rights and Obligations of Operators and Users***

***Article 22***

Pursuant to the Law, at the request of interested parties or in the line of duty, the Agency shall decide, by written decision, on the rights and duties of operators and users.

The decision from paragraph 1 of this Article shall be passed by the Director of the Agency.

Provisions of this Law which regulate the general administrative procedure shall be applied in the decision-making procedure on the rights and obligations referred to in paragraph 1 of this Article.

The decision from paragraph 2 of this Article shall be final and administrative litigation may be initiated against it.

The litigation shall not postpone the execution of the decision referred to in paragraph 2 of this Article.

***Rules on Procedures, Decisions and other General By-laws***

***Article 23***

The Managing Board shall pass rules on procedures, decisions and other general by-laws with the purpose of regulating the general issues within the scope of activities of the Agency.

Prior to the publication of general by-laws from paragraph 1 of this Article, the Agency shall obtain the statement on their constitutionality and lawfulness from the Ministry, and the Ministry shall provide a reasonable proposal on the manner of bringing the general by-laws into compliance with the Constitution, law and other regulations or general by-laws adopted by the National Assembly and the Government, in accordance with the law which regulates state administration.

***Transparency of the Work of the Agency***

***Article 24***

The work of the Agency shall be transparent.

Apart from the obligation pertinent to making available of the by-laws adopted according to the law which regulates state administration, the Agency shall, free of charge and according to the provisions on the protection of personal data and business confidentiality, make publicly available the adopted by-laws and other complete and updated data and information from within its scope of activities, in particular:

- 1) provisions for the implementation of this Law and other general by-laws;
- 2) minutes from sessions and decisions of the Managing Board;
- 3) registers, records and databases;
- 4) comparative reviews of the quality and prices of the publicly available services and other data relevant to the protection and promotion of consumer and/or end-user rights;
- 5) expert opinions, studies and analyses commissioned by the Agency;
- 6) statistical data and other indicators of the development of the electronic communications market;
- 7) other data and information related to the activities and business operation of the Agency.

***Financial Plan of the Agency***

***Article 25***

The Agency shall be financed in accordance with the financial plan.

The financial plan shall specify the total revenues and total expenditures of the Agency, including contingency reserves, and the elements of relevance for comprehensive review of earnings and employment policy of the Agency.

Total operating costs of the Agency envisaged in the financial plan, including contingency reserves, may not exceed real costs of the Agency's activities that are necessary for the successful performance of its responsibilities and unforeseen expenditures shall not exceed 2% of the planned expenditures.

The financial plan shall be adopted by the Managing Board of the Agency not later than 15 November of the current year for the following year.

The financial plan referred to in paragraph 1 of this Article shall be subject to Government approval.

The financial plan shall be made publicly available on the Agency's website.

In cases where the Government fails to give its consent to the financial plan referred to in paragraph 4 of this Article prior to the beginning of the year for which the financial plan is adopted, the expenditures of the Agency for each following quarter shall not exceed one quarter of the total amount of funds used in accordance with the financial plan for the previous year until the approval referred to in paragraph 5 of this Article is obtained.

***Sources of Financing of the Agency***

***Article 26***

The revenues of the Agency shall be the funds generated from the fees payable for the use of numbering resources, the use of radio-frequencies, the carrying out of activities within the electronic communications sector, and the income effectuated by the Agency in providing services from its scope of activities which shall be charged in accordance with this Law.

***Financial Reports and Auditing***

***Article 27***

The Managing Board shall adopt the annual financial report of the Agency.

The annual financial report of the Agency is subject to auditing by an independent authorised auditor.

The Agency's annual financial report and the authorised auditor's report shall be submitted to the Government.

The financial reports shall be published according to the law which regulates the accounting and auditing sector and shall be made publicly available of the Agency's website.

In accordance with the law, the financial operations of the Agency shall be subject to control by the State Audit Institution.

Should the annual accounts of revenues and expenditures of the Agency show a surplus of total revenues over the expenditures, such surplus shall be paid into the budget of the Government of the Republic of Serbia and shall be used for the further development of the sector of electronic communications and information society. A portion of such surplus, in proportion with the revenues made by the electronic communications network and service operators within the territory of the Autonomous Province of Vojvodina, shall be paid into the budget of the Autonomous Province of Vojvodina and shall be primarily used for the development of the electronic communications sector and information society within the autonomous province in question.

***Annual and Periodical Reports Submitted by the Agency to the National Assembly***

***Article 28***

The Agency's Managing Board shall submit an annual report on the activities of the Agency to the National Assembly. The report shall contain the following in particular:

- 1) information about the status of the electronic communications market in the Republic of Serbia;
- 2) information about the fulfilment of objectives and tasks stipulated in the annual Framework Business Plan of the Agency, and in particular the information pertaining to the implementation of goals set under the Strategy for the development of electronic communications;
- 3) the adopted financial plan, financial reports and authorised auditor's reports;
- 4) other information pertaining to the implementation of this Law.

The annual report on the activities of the Agency for the previous calendar year shall be submitted by the end of the second quarter of the current year at the latest.

Upon request of the National Assembly or the Government, the Agency shall submit a report of its activities for a period that shall not be shorter than one year, within the maximum of 60 days from the receipt of the request.

The reports from paragraphs 1 and 3 of this Article shall be made publicly available on the Agency's website.

**IV FEES**

***Article 29***

According to this Law, fees shall be paid for the following:

- 1) use of numbers;
- 2) use of radio-frequencies;

- 3) performance of electronic communications activities;
- 4) services provided within the scope of the Agency's activities.

The Managing Board of the Agency shall determine the fees from paragraph 1 of this Article.

The fees referred to in paragraph 2 of this Article shall be subject to Government approval.

The fees from paragraph 2 of this Article shall be made publicly available on the Agency's website.

### ***Fee for the Use of Numbers***

#### ***Article 30***

The fee for the use of numbers shall be determined depending on the type of service provided within the use of the assigned numbers, and/or the purpose of use of the assigned numbers and special technical conditions of relevance for such use (internal numbering, addressing in electronic communications networks, commercial exploitation of the assigned number and other), in view of the need for the introduction of new services, market competition and the efficient use of numbering resources.

The fees for the use of numbers shall be paid by the operator, holder of the licence for the use of numbering, in the amount determined on the annual basis by a written decision which shall also determine the manner of payment of fees and be adopted by the Agency.

### ***Fee for the Use of Radio-frequencies***

#### ***Article 31***

The amount of the fee payable for the use of radio-frequencies shall be determined depending on the type of service provided within the use of the assigned radio-frequencies, the purpose of the use of the assigned radio-frequencies and the number of inhabitants within the service zone, in accordance with the official data provided by the authority in charge of statistics, in view of the need of the introduction of new services, market competition and the efficient use of the radio-frequency spectrum.

The fees for the use of radio-frequencies shall be paid by the operator, holder of the individual licence for the use of radio-frequencies, in the amount which shall be determined on the annual basis by means a written decision which shall also determine the manner of payment of fees and be adopted by the Agency.

### ***Fee for the Performance of Electronic Communications Activities***

#### ***Article 32***

The amount of the fee payable for the performance of activities within the electronic communications sector shall not exceed 0.5% of the revenues made by the operator in performing electronic communications activities, and in case of the type of electronic communications network or service, the amount of the fee payable shall be determined in accordance with the financial plan of the Agency.

The fee for the performance of electronic communications activities shall be paid by the operator in the amount determined on the annual basis by a written decision which shall also determine the manner of payment of fees and be adopted by the Agency.

***Fee for the Provision of Services from the Scope of the Agency***

***Article 33***

The amount of the fee payable for the provision of services which fall within the scope of the Agency's competencies shall be determined according to the type of service the Agency is providing in accordance with this Law (granting and extending the validity of licences for the use of numbers and individual licences for the use of radio-frequencies, compliance assessments, technical inspections), taking into consideration the expenses of the Agency pertaining to the provision of the aforementioned services.

**V PUBLIC CONSULTATIONS**

***Article 34***

The Ministry and/or the Agency shall conduct public consultations in the process of preparing by-laws falling within their competencies, for the purpose of obtaining the opinion of expert and broader public about the effects of the proposed measures on the electronic communications market.

Public consultations from paragraph 1 of this Article shall not be conducted in the procedure of adoption of a temporary by-law introducing emergency measures for the protection of competition and the interests of users.

Public consultations shall be conducted in cases where it is necessary to permanently regulate or additionally extend the effect of measures prescribed by by-laws from paragraph 2 of this Article.

***Article 35***

Public consultations shall not last less than 30 days in cases where the subject of the consultation pertains to by-laws determining the general conditions for activities in the electronic communications sector, identification and analysis of markets susceptible to *ex ante* regulation, designation of operators with significant market power and their obligations, and issues concerning shared use, interconnection and access.

Public consultations shall not last less than 10 working days in cases not stipulated in paragraph 1 of this Article.

***Article 36***

The Ministry and/or the Agency shall specify the agenda of a public consultation which shall include data on the subject, the duration and the manner of providing comments during the consultation procedure.

The agenda of the public consultation shall be made publicly available on the Ministry's and/or the Agency's website, together with contact details of persons in charge of providing information on the subject and the course of public consultations.

Comments on the subject of public consultation shall be submitted in writing and shall include the name and/or name of company and contact details of the person providing comments.

All confidential data referring to the comments during the public consultation procedure shall be abstracted into a special document (Annex).

Comments provided during the course of the public consultation procedure shall be made publicly available in a special section of the Ministry's and/or the Agency's website, with the exception of the Annex which shall comprise confidential data.

**VI ELECTRONIC COMMUNICATIONS ACTIVITIES  
UNDER THE REGIME OF GENERAL AUTHORISATION**

*General Conditions*

*Article 37*

Activities in the electronic communications sector shall be carried out under the regime of general authorisation, and/or in accordance with general conditions that may be prescribed for all or certain types of electronic communications networks and services according to the provisions of this Law.

General conditions from paragraph 1 of this Article shall refer to the conditions concerning the following:

- 1) notification of the Agency on the commencement, change in and termination of electronic communications activities, and other data and information in accordance with the provisions of this Law;
- 2) payment of fees determined by this Law;
- 3) construction or installation, use and maintenance, and shared use of electronic communications networks and associated facilities, in accordance with the provisions of this Law, special laws which regulate spatial planning and construction and provisions which regulate the sphere of environmental protection and the sphere of the protection of cultural heritage;
- 4) the control of population exposure to electromagnetic fields caused by the operation of electronic communications networks, associated facilities and electronic communications equipment, in line with the provisions which regulate environmental protection;
- 5) fulfilment of prescribed technical and other requirements;
- 6) operators' obligation related to interconnection, access and interoperability of networks and services;
- 7) enabling communication among emergency services and relevant authorities and organizations and notification of the public in cases of natural disasters and distress;
- 8) participation in the financing of the universal service provision in the amount determined by the Agency pursuant to this Law;
- 9) ensuring the availability of numbering resources to end-users according to the provisions of this Law;
- 10) provision of services using radio-frequencies under the general authorisation regime;
- 11) obligation of providing transmission of media content of general interest, according to the provisions of this Law;
- 12) protection of user rights in the electronic communications sector according to the provisions of this Law as well as enabling conditions pertaining to the availability of services which fall within universal service for persons with disabilities;
- 13) availability of comprehensible and complete information on prices, requirements for access and use (including limitations) and quality of public communications networks and services;
- 14) protection of personal data and privacy within the electronic communications sector, in accordance with the provisions of this Law and laws which regulate the protection of personal data;
- 15) introduction of measures for the prevention and suppression of abuse and fraud associated with the use of electronic communications networks and services;
- 16) introduction of measures for safeguarding security and integrity of public communications networks and the prevention of electromagnetic interference among electronic communications networks and services;
- 17) enabling lawful interception of electronic communications and access to retained data.

The Agency shall prescribe in detail the conditions from paragraph 2 of this Article and determine conditions for all or certain electronic communications activities under the regime of



general authorisation, depending on the electronic communications network or service, taking into account the level of detail and adequacy, and the principles of proportionality and non-discrimination.

### ***Notification on the Performance of Electronic Communications Activities***

#### ***Article 38***

Operators shall notify the Agency in writing about the commencement, change in and termination of the performance of electronic communications activities at least 15 days in advance.

Notification referred to in paragraph 1 of this Article shall include:

- 1) operator's name i.e. the name of the company, personal ID number and tax identification number, address or seat of the company and contact details of persons appointed as company representatives;
- 2) a short description of the networks or services the notification refers to;
- 3) envisaged date of the commencement, change in or termination of the performance of electronic communications activities.

The notification from paragraph 1 of this Article shall be submitted in the form of notification prescribed by the Agency.

The Agency shall keep and regularly update a Register of operators of public communications networks and services (hereinafter: Register of electronic communications network and service operators) and shall make it publicly available on its website.

At the request of the operator, the Agency shall issue a certificate confirming the submission of the notification, within seven days following the receipt of the notification referred to in paragraph 1 of this Article.

The entry into the register of operators shall not be considered a condition for the commencement of the performance of electronic communications activities and shall not pertain to the rights exercised by operators within the framework of the general authorisation regime referred to in this Law.

In line with its duties, the Agency shall delete the operator from the register:

- 1) when the operator notifies the Agency in writing on the termination of the provision of services, as of the date of termination of the activity indicated in the notification;
- 2) when the operator interrupts the provision of electronic communications networks and services for a period exceeding six consecutive months;
- 3) if under the final court judgement the operator has been banned from providing the notified services.

### ***Fundamental Rights of Operators within the General Authorisation Regime***

#### ***Article 39***

Pursuant to this Law, an operator is entitled to:

- 1) perform an electronic communications activity;
- 2) request the right of way or the right to use the land owned by another person (easement);
- 3) negotiate and reach agreements on interconnection and access with other national and foreign operators;
- 4) be designated as the provider of all or individual services falling within the universal service obligation on the entire or a portion of the territory of the Republic of Serbia.

***Performing the Activity through a Separate Legal Entity or Branch Office***

***Article 40***

A person, who besides an electronic communications activity performs another economic activity, shall perform the electronic communications activity through a separate legal entity or a branch office established in accordance with the law which regulates the legal status of undertakings.

***Submission of Data and Protection of Confidentiality***

***Article 41***

At the request of the Agency, the operator shall supply all necessary data and information of relevance for the performance of activities which fall within the scope of the Agency, in particular the data and information pertaining to:

- 1) verification of the compliance of operator's activities with the prescribed general conditions for the performance of electronic communications activities, special obligations specified for operators with SMP, conditions prescribed by licences for the use of numbers, individual licences for the use of radio-frequencies, and other obligations determined by this Law and by-laws adopted in accordance with this Law;
- 2) acting on requests for shared use, interconnection and access, and keeping a database on available capacities that may be subject of requests for shared use or access;
- 3) market analysis according to the provisions of this Law;
- 4) evaluation of the effects of developing new networks and services in view of safeguarding competition within the electronic communications sector;
- 5) ensuring the effective and efficient management and use of numbering and radio-frequency spectrum resources, as well as ensuring the keeping of the databases on the use of the aforementioned resources;
- 6) publication of comparative overviews and keeping of the databases on prices, access and use conditions(including limitations) and quality of public communications networks and services;
- 7) mediation in settling disputes between subscribers and operators;
- 8) ensuring the protection of personal data and privacy of users, and assessment of security and integrity of electronic communications networks and services, including the implementation of policies on security, continuity of work and data protection;
- 9) collection and publication of statistical data.

The Agency's request from paragraph 1 of this Article shall contain the legal foundation, the subject matter and aim of the request, the detail level of requested data and the time limit for responding to the request.

The time limit in paragraph 2 of this Article shall not exceed 15 days from the day of the operator receives the request, unless prescribed otherwise by this Law.

Members of the Managing Board, Director of the Agency, the employees of the Agency and other legal and physical entities engaged by the Agency to carry out certain tasks shall keep the confidentiality of collected data and information marked with a certain degree of confidentiality in accordance with the law regulating data confidentiality, and/or business confidentiality established by means of the data owner's act or a contract, in accordance with law.

Persons referred to in paragraph 4 of this Article shall keep the confidentiality of collected data and information regardless of the manner in which they have learnt them, during and after the expiry of the term of office or the period of time the collected data and information have been marked with a degree of confidentiality or until they are freed from the obligation of the protection of confidentiality by a decision of the owner of the aforementioned data and information.

The data and information, made publicly available and published in accordance with this Law, other provision or the decision of the data owner, shall be considered as the data and information the public is entitled to in line with the law on free access to information of public importance and shall not be considered confidential in accordance with the provisions stipulated herein.

## **VII. ELECTRONIC COMMUNICATIONS NETWORKS, ASSOCIATED FACILITIES, ELECTRONIC COMMUNICATIONS EQUIPMENT AND TERMINAL EQUIPMENT**

### ***Design, Construction or Installation, Use and Maintenance of Electronic Communications Networks and Associated Facilities***

#### ***Article 42***

Electronic communications networks and associated facilities shall be designed, constructed or installed, used and maintained:

- 1) in accordance with the prescribed technical and other requirements;
- 2) in accordance with the law which regulates spatial planning and construction, provisions which regulate the sphere of environmental protection, and the sphere of the protection of cultural heritage;
- 3) in the manner that will ensure that their functioning does not cause interference in the functioning of other electronic communications networks, associated facilities and electronic communications equipment.

#### ***Article 43***

In the construction of business and residential premises, the investors shall build the accompanying infrastructure necessary for the installation of electronic communications networks, associated facilities and electronic communications equipment direct to the user's premises, in accordance with the prescribed technical and other requirements.

At the proposal of the Agency, and having obtained the opinion of the Ministry in charge of spatial planning and environmental protection, the Ministry shall prescribe in detail the technical and other requirements referred to in paragraph 1 of this Article.

### ***Technical Provisions***

#### ***Article 44***

At the Agency's proposal, the Ministry shall adopt a technical provision in order to prescribe the requirements for certain types of electronic communications networks, associated facilities, electronic communications equipment and terminal equipment.

Should it be determined by the provision referred to in paragraph 1 of this Article that the verification of compliance is to be carried out by a compliance assessment authority, the Ministry shall nominate such a body in accordance with the law which regulates technical requirements for products and compliance assessment.

In accordance with the Law, the Agency may be nominated as the compliance assessment authority.

***Construction Work in the Vicinity of Electronic Communications Networks  
and Associated Facilities***

***Article 45***

A protected area shall be established in the vicinity of electronic communications networks and associated facilities where no construction and installation of facilities shall be permitted, nor shall any construction work that might impair or disturb the functioning of electronic communications be carried out.

At the proposal of the Agency and with previously obtained opinion from the ministry in charge of spatial planning and environmental protection, the Ministry shall prescribe detailed requirements for the establishment of a protected area, depending on the type of electronic communications network and associated facilities the protected area refers to, and the manner in which construction work shall be done in the vicinity of electronic communications networks, particularly with respect to the protection of the networks from damage or harmful interference.

***Radio Corridors and Protected Areas***

***Article 46***

Available radio relay links (radio corridors) shall be specified in urban development plans.

Along radio corridors and along the directed radio signal propagation paths between radio stations there shall be a protected area where building of other radio stations, antenna systems or other facilities that may obstruct the propagation of radio signal or cause interference, shall be prohibited.

Should amendments to the urban development plan put at risk the functioning of electronic communications within a radio corridor, a new radio corridor shall be designated to ensure the unhindered provision of electronic communications.

At the proposal of the Agency and with previously obtained opinion of the ministry in charge of spatial planning and environmental protection, the Ministry shall prescribe detailed requirements for the establishment of radio corridors, dimensions of the protected area and construction of facilities within this area.

***Electromagnetic Compatibility***

***Article 47***

Electronic communications network, associated facilities, electronic communications equipment and terminal equipment shall not cause electromagnetic interference that might have a harmful effect on the functioning of other electronic and/or other devices and plants in their vicinity.

Electronic communications network, associated facilities, electronic communications equipment and terminal equipment shall have the adequate immunity to electromagnetic interference which shall ensure their unhindered operation in the presence of harmful interferences.

At the proposal of the Agency, the Ministry shall prescribe in detail the requirements relevant to ensuring electromagnetic compatibility referred to in this Article.

***Measuring the Level of Electromagnetic Field***

***Article 48***

The agency shall measure the intensity of electromagnetic field generated by electronic communications networks, associated facilities, electronic communications equipment and terminal equipment, in accordance with the threshold limit values specified in appropriate provisions.

The Agency is under the obligation to report the values exceeding the aforementioned threshold limit values detected during measurements referred to in paragraph 1 of this Article to the relevant inspection authority.

## **VIII. THE RIGHT TO EASEMENT AND SHARED USE**

### ***Public Interest for Expropriation***

#### ***Article 49***

For the purpose of construction and installation of electronic communications networks and associated facilities, public interest for the expropriation of property may be determined in accordance with the law which regulates expropriation.

### ***The Right to Easement***

#### ***Article 50***

Operators shall be entitled to request the right of way through other person's property or the right to use other person's property (easement), should it be necessary for the construction or installation of electronic communications networks and associated facilities.

The operator and the owner and/or holder of the right to use the property shall sign a contract to regulate in detail the manner of executing easement and the existence and amount of fee payable for the establishment of the right to easement.

Should persons from paragraph 2 of this Article fail to reach an easement agreement, the easement shall be executed in accordance with the law.

When easement is based on publicly owned property, and in cases where the law which regulates public property does not prescribe otherwise, relevant public authorities which decide about the agreement from paragraph 2 of this Article shall define the conditions for acquiring the rights to easement in a non-discriminatory manner and make it publicly available, and reach the decision on signing the agreement without delay, within 30 days from the day of the receipt of the request for the signing of the agreement.

### ***Shared Use***

#### ***Article 51***

An operator shall be entitled to request shared use (including physical co-location) of network elements and associated facilities of another operator or a third party, and property for the use of which another operator or a third party has established the right to easement or property acquired by expropriation, in cases where it is necessary for the purpose of competitive, effective and efficient performance of electronic communications activities and/or where it is impossible to construct or install a new electronic communications network and associated facilities without causing detrimental effects on the environment, public security, realization of spatial plans or preservation of cultural heritage.

The operator shall make an agreement with another operator or a third party, holder of the right for the use of network elements, associated facilities and other property, which shall regulate in detail the mutual rights and obligations concerning shared use, including the allocation of expenses, taking into account previous investments, encouragement of further investments and the possibility of a reasonable rate of return on investment, bearing in mind the risk involved in making the investment.

If the agreement from paragraph 2 of this Article is not signed within 60 days from the day of the receipt of the request for the signing of the agreement, and if the requirements referred to in

paragraph 1 herein are met, the Agency shall be authorised to adopt a written decision, at the request of an interested party or in the line of duty, which shall stipulate the conditions of the shared use, including the allocation of expenses, taking into account previous investments, encouragement of further investments and the possibility of a reasonable rate of return on investment, bearing in mind the risk involved in making the investment.

***Database on Capacities that May be Subject of Shared Use and Access***

***Article 52***

The Agency shall keep an updated database on the type, availability and geographic location of capacities which may be subject of request for shared use or access.

The Agency shall update and make publicly available the database from paragraph 1 of this Article on its website, providing a possibility of comprehensive browsing capacity.

**IX. INTERCONNECTION AND ACCESS**

***Article 53***

In accordance with the provisions of this Law, the operator shall be entitled to interconnect with other operators and access network elements and associated facilities of another operator in order to provide electronic communications services to end-users.

The operator who receives a request for interconnection and/or access, shall negotiate the interconnection and/or access conditions with the operator who has submitted the request.

The operator with SMP shall provide interconnection and access to other operators in accordance with the provisions of this Law and the Agency's decision designating such operator as an operator with SMP.

Technical and commercial conditions of interconnection and/or access on a national and international level shall be regulated by a contract between operators.

An operator shall keep the confidentiality of information obtained before, during and after negotiations or conclusion of the contract on interconnection and/or access, and use such information solely for the purposes it has been provided for.

Should any of the electronic communications operators fail to reach an agreement on interconnection and/or access, the Agency shall be authorised to adopt a decision, at the request of an operator or in the line of duty, within 60 days from the commencement of negotiations, to ensure interconnection and/or access, including technical and commercial conditions.

***Special cases of Interconnection between Electronic Communications Networks for Special Purposes and Public Communications Networks***

***Article 54***

At the request of defence and security authorities and emergency services, by its decision, the Agency may impose an obligation on an operator to provide, within the existing technical possibilities, priority interconnection with an electronic communications network for special purposes for a period not longer than 14 days, in cases where in a certain area there are no adequate capacities of electronic communications networks for special purposes and/or when for the reasons of urgency or unpredictability, it was not possible to predict and realize interconnections necessary for the execution of duties of defence and security authorities and emergency services prescribed by law (e.g. for securing visits of foreign statesmen, sports manifestations and public gatherings, actions in cases of major traffic accidents, fire and disasters, urgent interventions in case of terrorist attacks, military drills, etc.).

Technical conditions and fees payable for the interconnection service shall be determined by the decision from paragraph 1 of this Article.

## **X. UNIVERSAL SERVICE**

### *Universal Services*

#### *Article 55*

Basic set of universal services shall include the following:

- 1) access to public telephone network and to publicly available telephone services at a fixed location, including the service of data transmission which enables functional Internet access;
- 2) access to directory enquiry service and access to public telephone directories;
- 3) use of public pay telephones;
- 4) free calls to emergency services;
- 5) special measures aimed at giving persons with disabilities and socially vulnerable users equal possibilities of access to publicly available telephone services, including calls to emergency services, directory enquiry service and access to public telephone directories;

Universal services shall be provided on the principle of technological neutrality with the prescribed level of quality and at affordable prices, and at even more affordable prices to persons with disabilities and socially vulnerable users.

At the proposal of the Agency, which shall also include the analysis of universal service provision and the quality and prices thereof in the Republic of Serbia, the Ministry shall designate the scope, geographic area coverage and quality of universal service provision, as well as the requests related to the equal possibilities of access to universal services by persons with disabilities, taking into account the level of development of public communications networks and the availability of public electronic communications services in the Republic of Serbia.

### *Designation of Universal Service Operators*

#### *Article 56*

The Agency may designate one or more operators to have the obligation to provide all or individual services which fall within the set of universal services on the entire or a portion of the territory of the Republic of Serbia in order to ensure universal service coverage of the entire territory of the Republic of Serbia.

The Agency shall designate the operator with universal service obligation referred to in paragraph 1 herein in an objective, transparent and non-discriminatory manner in order to ensure effective and efficient universal service provision, i.e. the scope of determined obligations which shall not represent an excessive burden for the operator.

The operators from paragraph 1 of this Article shall make publicly available the data on their universal service provision, including particularly the data on geographical availability, prices, conditions of access and use (including limitations) and quality.

The Agency shall specify in greater detail the procedure referred to in paragraph 3 of this Article in its Rules.

The Agency shall be authorised to impose on the operator referred to in paragraph 1 herein the obligation to modify the prices or conditions for the use of services within universal service in a manner which shall be transparent and non-discriminatory, in case it estimates it to be in the interest of ensuring equal opportunities for the use of services by persons with disabilities, and/or providing availability of these services for socially vulnerable users.

The Agency shall assess the actions of the operator from paragraph 1 of this Article in respect to certain obligations and analyse the provision of services which fall within the universal service obligation in the Republic of Serbia, including the quality and the price of such service provision, at least once in a period of three years following the day of the adoption of the decision from paragraph 1 of this Article, and, in line with the assessment and analysis results, decide about the obligations of the operator from paragraph 1 of this Article, and draft amendments to the document referred to in paragraph 3 of Article 55 of this Law.

The analysis from paragraph 6 of this Article shall be made publicly available on the Agency's website.

### ***Determination of Excessive Costs of Universal Service Provision***

#### ***Article 57***

The operators with universal service obligation shall submit a report on universal service provision to the Agency by the end of the first quarter of the current year for the previous year at the latest.

The report from paragraph 1 of this Article may include a request for the remuneration of excessive costs of universal service provision (hereinafter: excessive costs), substantiated by a list of costs which are deemed excessive burden.

The Agency shall regulate the manner in which the excessive costs shall be substantiated and the criteria for exercising the right to remuneration of excessive costs.

Within three months from the day of receipt of the request from the operator referred to in paragraph 2 herein, and the excessive cost particulars referred to in paragraph 3 herein, the Agency shall adopt a decision stipulating the amount of excessive costs.

### ***Financial Resources for the Remuneration of Excessive Costs***

#### ***Article 58***

The financial resources for the purpose of the remuneration of excessive costs referred to in paragraph 2 of this Article shall be secured through contributions paid by operators into a special universal service account opened with the Agency.

The decision adopted by the Agency shall specify the amount of the contributions the operators shall pay for financing the universal service provision in the previous accounting period, in the manner which shall disrupt market relations to the slightest possible extent and shall be in proportion to the respective operator's share in the market; the total amount of contributions paid by all operators must correspond to the total amount of excessive costs stipulated in the decision referred to in Article 57 paragraph 4 of this Law.

## **XI. MARKETS SUSCEPTIBLE TO EX ANTE REGULATION AND OBLIGATIONS OF OPERATORS WITH SIGNIFICANT MARKET POWER**

### ***Identification of Markets Susceptible to Ex Ante Regulation***

#### ***Article 59***

A market which is deemed susceptible to *ex ante* regulation shall be the one having structural, regulatory and other lasting barriers which prevent the market entry of new competitors, where it is impossible to develop effective competition without *ex ante* regulation, and where observed market failures cannot be eliminated only by implementing provisions for protecting competition (hereinafter: relevant market).



The Agency shall identify relevant markets by applying European Union recommendations relevant to markets susceptible to *ex ante* regulation.

***Relevant Market Analysis***

***Article 60***

At least once in three years, the Agency shall conduct the analysis of relevant markets (hereinafter: market analysis), and, if necessary, additional markets as well, taking into account the European Union recommendations pertinent to the analysis of markets and identification of significant market power.

In the procedure of market analysis, the Agency shall cooperate with a competent competition protection authority.

The Agency shall make the market analysis report publicly available on its website.

***Criteria for Designation of Operators with Significant Market Power***

***Article 61***

An operator shall be deemed to have significant market power on the relevant market if, either individually or jointly with other operators, it enjoys a position equivalent to dominance, that is to say a position giving it the power to behave independently of other competitors, buyers and, ultimately, consumers to a significant extent.

In deciding upon individual significant market power, the following shall particularly be taken into consideration:

- 1) overall size of the company and its competitors, in particular the number of users and total revenues on the relevant market;
- 2) control over the infrastructure not easily duplicated;
- 3) technological advantages or superiority allowing the operator to hold a better position on the market;
- 4) absence of or low countervailing buyer power;
- 5) easy or privileged access to capital markets or financial resources;
- 6) diversification of products or services (e.g. bundled products or services, and the like);
- 7) economies of scale;
- 8) economies of scope;
- 9) vertical integration;
- 10) highly developed distribution and sales network;
- 11) absence of potential competition;
- 12) barriers to expansion.

In deciding upon joint significant market power, the following shall particularly be taken into consideration:

- 1) market saturation;
- 2) stagnant or moderate growth on the demand side;
- 3) low elasticity of demand;
- 4) homogeneous products;
- 5) similar cost structures;
- 6) similar market shares;
- 7) lack of technical innovation, mature technology;
- 8) absence of excess capacity;
- 9) high barriers to entry into the market;
- 10) lack of countervailing buyer power;

- 11) absence of potential competition;
- 12) various informal and other links between the companies concerned;
- 13) possibility of applying retaliatory mechanisms;
- 14) lack of or reduced opportunity for price competition.

If an operator is designated to have the significant market power on a specific market, his significant market power can also be designated on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the operator.

### ***Designation of Operators with Significant Market Power***

#### ***Article 62***

Once the Agency, based on the previous market analysis, establishes the absence of effective competition on a relevant market (and a closely related market), it shall adopt a decision on designating the operator who, individually or jointly with other operators, has significant market power on that particular market.

By adopting the decision from paragraph 1 of this Article, the Agency shall impose on the operator with SMP at least one obligation from Article 63 of this Law, taking into account the type and nature of established market failures, previous investments, promotion of further investments and possibilities for a reasonable rate of return on investments in view of the risk involved in making the investment.

In adopting the decision from paragraph 1 of this Article, the Agency shall request all interested parties to render opinions significant for determining the obligations of the operator with SMP and, if necessary, request the opinion of the competition protection authority.

The Agency shall follow the implementation of obligations imposed on the operator with SMP and shall, in the line of its duty, review the decision at least once in the course of three years starting from the day of the adoption thereof, and decide on the obligations of the operator with SMP according to the observed state of the market

The decision from paragraph 1 of this Article shall cease to be valid on the day the Agency's by-law pertinent to determining relevant markets comes into force, if that decision does not stipulate that the markets where the operator had previously been designated as having significant market power are susceptible to *ex ante* regulation.

### ***Obligations of Operators with Significant Market Power***

#### ***Article 63***

The decision on designating operators with significant market power shall stipulate the following obligations:

- 1) publication of relevant data;
- 2) non-discriminatory actions;
- 3) accounting separation;
- 4) provision of access and use of parts of the network infrastructure and associated facilities;
- 5) price control and cost-based accounting;
- 6) provision of minimum set of leased lines;
- 7) provision of operator selection and operator pre-selection services;
- 8) offering retail services under certain conditions.

***Public Availability of Relevant Data***

***Article 64***

In terms of interconnection and/or access services, the obligation to publish relevant data refers in particular to the process of making accounting records, technical specifications, network characteristics, terms and conditions for supply and use and validity periods of the offer and prices, publicly available.

Upon the request of the Agency, the operator with SMP, having previously been put under the obligation of non-discrimination, shall make and publish a reference interconnection offer within 60 days following the receipt of the request.

At the request of the Agency, the operator with SMP within the relevant wholesale market of access to network parts and associated facilities, shall make and publish a reference offer for unbundled access to local loop within 60 days following the receipt of the request.

Reference offers referred to in paragraphs 2 and 3 of this Article shall be made in accordance with market needs and shall include a description, technical and commercial conditions for interconnection and access, and/or unbundled access to local loop.

The reference offer shall be broken down into individual components to the extent to which it enables an interested operator to select specific components of the offer without having to accept components irrelevant for the provision of the service which is the subject of interconnection and/or access.

The Agency shall specify the minimum content, the level of detail and the manner of publication of reference offers referred to in paragraphs 2 and 3 of this Article.

In case the operator fails to respond to the request of the Agency referred to in paragraphs 2 and 3 of this Article, or if the Agency establishes that the reference offer has not been drawn up in accordance with the provision stipulated in paragraph 6 of this Article, the Agency shall make and publish a reference offer for interconnection and access, and/or unbundled access to local loop.

***Non-discriminatory Action***

***Article 65***

The obligation of non-discriminatory action refers to the obligation of an operator with SMP to ensure equal treatment of other operators in the provision of interconnection and/or access services in comparable circumstances.

In accordance with the obligation referred to in paragraph 1 of this Article, the operator with SMP shall provide services to other operators under identical conditions and of identical quality as if it were providing the services for its own needs and/or for the needs of its subsidiaries.

***Accounting Separation***

***Article 66***

The obligation of accounting separation refers to monitoring separate accounting records of business activities of an operator with SMP related to the provision of interconnection and/or access services.

The method and format of accounting separation shall be specified in greater detail in the decision designating operators with SMP.

The Agency shall have the power to request the operator with SMP and its subsidiaries to disclose their wholesale prices and/or internal price transfers in particular in order to ensure

compliance with the obligation of equal treatment referred to in Article 62 of this Law and to prevent unfair cross-subsidy.

For the purpose of verification of compliance with the obligation to publish relevant data and ensure non-discriminatory treatment, the Agency shall have the power to seek access to concluded contracts, accounting records, data on revenue generated within the market and to publish such data if that would contribute to the development of open competition, taking care not to essentially jeopardize the business activities of the operator.

### ***Access to and Use of Parts of Network Elements and Associated Facilities***

#### ***Article 67***

The obligation of access to and use of parts of network elements and associated facilities refers to meeting reasonable requests of other operators for access to and use of specific elements of the network and associated facilities of an operator with SMP.

The obligation from paragraph 1 of this Article is imposed in particular where it is established that there is a reasonable threat that denial of access, unjustifiable terms and conditions or any other similar restriction by the operator with SMP would prevent the development of competition on the retail level or endanger the interests of users.

In imposing the obligation referred to in paragraph 1 of this Article, the operator with SMP may be required to do the following:

- 1) give third parties access to specified network elements and associated facilities, including access to passive network elements and unbundled access to local loop, particularly for enabling carrier selection and carrier pre-selection and the provision of services via local loop;
- 2) negotiate with the other operator requesting access in good faith;
- 3) not withdraw access to network elements and associated facilities already granted;
- 4) provide specified services to other operators on a wholesale basis;
- 5) grant access to technical interfaces, protocols and other key technologies that are indispensable for the interoperability of services and/or virtual network services;
- 6) provide co-location and/or other forms of shared use of associated facilities;
- 8) provide interoperability of services as a link between end-users, including intelligent networks services, or roaming services in mobile networks;
- 9) provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of electronic communications services;
- 10) interconnect networks and/or associated facilities;
- 11) provide access to related services such as services based on data on identity, location and availability of users.

Measures from paragraph 3 of this Article may be supplemented by additional requirements concerning the fulfilment of the principles of fairness and honesty, righteousness and timeliness.

In the determination of measures set out in paragraph 3 of this Article, the proportionality of obligations shall particularly be taken into account and the following shall particularly be appreciated:

- 1) the technical and economic viability of using or installing facilities of another operator, taking into account the rate of market development and the nature of interconnection and/or access involved, such as the use of conducting pipes and channels;
- 2) the feasibility of providing the proposed access in relation to the capacity available;
- 3) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;

- 4) the need to safeguard competition in the long term, particularly economically effective competition on the level of infrastructure;
- 5) protection of intellectual property rights;
- 6) obligations resulting from relevant international agreements.

In imposing the obligations set out in this Article, the Agency may prescribe technical and organizational requirements to be met by the operator with SMP as well as operators requesting access and use of network elements and associated facilities when this is considered to be a prerequisite for securing the unhindered functioning of the network.

### ***Price Control and Cost-based Accounting***

#### ***Article 68***

The obligation of price control and cost-based accounting refers to the implementation of the prescribed cost recovery and price control obligations imposed on the operator with SMP, including the obligation of cost orientation of prices and the obligation related to cost-based accounting for the provision of specific types of interconnection and/or access services.

The obligations referred to in paragraph 1 of this Article shall be imposed particularly when it is determined that the absence of effective competition enables the operator with SMP to maintain exceedingly high prices or resort to the application of price squeeze to the detriment of end-users.

In imposing the obligation from paragraph 1 of this Article, the operator with SMP may be ordered to:

- 1) apply the cost recovery mechanism or price control methodology in a manner that ensures that it serves to promote efficiency, sustainable competition and consumer benefits, whereupon the prices available at comparable markets and retail prices of the operator with SMP may also be taken into account;
- 2) adjust service prices;
- 3) apply cost-based accounting with the aim of ensuring price control.

In imposing the measures from paragraph 3 of this Article, the previous investments made by the operator with SMP will particularly be taken into account, as well as the encouragement of further investments and the possibility of a reasonable rate of return on investment in view of the risks involved.

Where an operator has an obligation pertinent to cost orientation of its prices, the burden of proving that prices of its services are derived from costs, including a reasonable rate of return on investment, shall lie with the operator concerned. The operator in question is under the obligation to provide a detailed account of its pricing policy upon the request of the Agency.

In determining the costs of effective service provision, the Agency may apply a different methodology of cost-based accounting from the one applied by the operator with SMP.

For the calculation of costs of effective service provision, the Agency shall be authorised to apply the methodology of cost-based accounting irrespective of the methodology used by the operator with SMP.

Once the obligation of cost-based accounting has been imposed on an operator with SMP, the Agency shall determine and ensure that a description of the cost-based accounting system is made publicly available, comprising at least the main sets of costs and the rules governing the allocation of such costs, and shall employ the service of an independent auditor for an annual verification of the compliance of cost-based accounting of operator with SMP with the prescribed method of cost-based accounting.

The auditor's report from paragraph 7 of this Article shall be made publicly available on the Agency's website.

### ***Minimum Set of Leased Lines***

#### ***Article 69***

The obligation of offering the minimum set of leased lines refers to the duty of an operator with SMP on the relevant market of leased lines to provide partial or full lease of the minimum set of leased lines to other operators within certain parts or the entire territory of the Republic of Serbia.

The Agency shall provide a detailed account of the scope and the contents of the minimum set of leased lines from paragraph 1 of this Article.

In imposing the obligation from paragraph 1 of this Article, the manner of providing the minimum set of leased lines shall be prescribed for the operator with SMP, in such a way so as to ensure the non-discriminatory service provision, cost-based prices, as well as the transparency of data on prices, technical and other conditions related to the provision and use of such a service.

### ***Carrier Selection and Carrier Pre-selection***

#### ***Article 70***

The obligation pertinent to the provision of carrier selection and carrier pre-selection services refers to the duty of an operator with significant market power within the relevant market of access to public telephone network at a fixed location to enable its subscribers to access the services of any interconnected operator of publicly available telephone services, in the following manner:

- 1) by providing the service of carrier selection on a call-by-call basis by dialling an operator selection code;
- 2) by providing the service of carrier pre-selection, with a possibility of overriding any pre-selected choice on a call-by-call basis by dialling an operator selection code.

In imposing the obligation from paragraph 1 of this Article, the operator with SMP may be ordered to:

- 1) ensure that pricing for access and interconnection within carrier selection and carrier pre-selection services is cost oriented;
- 2) adjust direct charges to subscribers for the services of carrier selection and carrier pre-selection ensuring that they do not act as a disincentive for the use of these services.

### ***Regulatory Control of Retail Service Provision***

#### ***Article 71***

The obligation pertinent to the provision of retail services under certain conditions refers to the duty of an operator with SMP within a relevant retail market to provide retail services under prescribed conditions.

The obligation from paragraph 1 of this Article shall be imposed upon the conclusion that other obligations set out in Article 62 of this Law would not be deemed effective.

In imposing the obligation from paragraph 1 of this Article and with reference to the nature of relevant market failures, and the need to protect the interests of end-users and encourage effective competition, the remedies imposed on the operator with SMP may include the following:

- 1) prevention of excessive pricing, prevention of the activities hindering market entry or reducing competition by way of exceedingly high or exceedingly low prices, prevention of

unjustifiable preference of certain end-users or the prevention of unfounded bundling of certain services;

2) the limitation of the retail price threshold, the adoption of measures pertaining to the price control of individual tariffs and the obligation of service price calculation based on costs or prices within comparable markets.

Should any of the obligations within retail price regulation be imposed on an operator with SMP, the Agency shall have the power to impose the obligation of cost accounting as well, and it shall employ the service of an independent auditor with the aim of obtaining the annual verification of the compliance of cost accounting of the operator with SMP with the prescribed implementation of the cost accounting principle.

The report of the auditor from paragraph 4 of this Article shall be made publicly available on the Agency's website.

## **XII NUMBERING**

### ***Administering the Numbering Plan***

#### ***Article 72***

The management and the assignment of addresses and numbers as scarce resources shall be carried out in a manner which ensures their reasonable, equal and effective use, in accordance with the Numbering Plan.

The Numbering Plan shall specify the purpose of addresses and numbers, ensure the equal availability of numbering resources for all publicly available electronic communications services and/or operators providing such services, conditions for the implementation of number portability and carrier selection and pre-selection services, the introduction of new electronic communications services, and the fulfilment of obligations resulting from relevant international agreements.

The Agency shall adopt the Numbering Plan and make it publicly available on its website.

### ***Licence for the Use of Numbers***

#### ***Article 73***

Following the adoption of a decision, the right of use of numbering resources shall be granted in the form of a licence for the use of numbers.

The decision referred to in paragraph 1 herein shall be adopted by the Agency, upon receipt of the request from an operator.

The request referred to in paragraph 2 herein shall contain the following data:

- 1) name and address of the applicant;
- 2) type of the electronic communications network or service for the provision of which the assignment is requested;
- 3) requested numbers;
- 4) purpose for which the requested numbers and/or addresses will be used;
- 5) dates envisaged for the commencement of the use of the requested addresses and/or numbers;
- 6) the period of time for which the assignment of numbers is requested.

The request referred to in paragraph 2 herein shall be submitted in the form of request prescribed by the Agency.

The decision on granting the requests referred to in paragraph 2 herein shall be made in the order of submission of the abovementioned requests, within 20 days following the receipt of the request, except in cases where a different time limit is set out in the international agreements.

The request referred to in paragraph 2 herein may be rejected if contrary to the Numbering Plan or if the requested numbering resources are not available.

### ***Contents of the Licence for the Use of Numbers***

#### ***Article 74***

The decision regulating the issuance of the licence for the use of numbers shall contain the data on:

- 1) the holder of the licence;
- 2) the assigned numbers;
- 3) the period of time for which the numbers are assigned;
- 4) the deadline for the commencement of the use of the assigned numbers or addresses;
- 5) the purpose for which the right of use of the assigned numbers has been given;
- 6) the manner in which the efficient and reasonable use of numbers shall be provided, including the manner of keeping records of the used numbers and the obligation of reporting the intensity of use of these numbers to the Agency;
- 7) the obligations concerning the use of assigned numbers resulting from relevant international agreements.

The decision from paragraph 1 of this Article may contain other data if in connection with the prescribed requirements for the issuance of the licence for the use of numbers or if resulting from the relevant international agreements.

The holder of the licence for the use of numbers shall inform the Agency about any change of data stipulated in paragraph 1, item 1) of this Article within 30 days from the occurrence of the change.

### ***Validity and Extension of Validity of the Licence for the Use of Numbers***

#### ***Article 75***

The licence for the use of numbers shall be issued for a period which may not exceed 10 years.

In compliance with the conditions pertinent to the procedure of licence issuance, the validity of the licence for the use of numbers may be extended for a period which shall not exceed the period of time for which a new licence is issued.

The holder of the licence for the use of numbers shall submit an application for the extension of the validity period of the licence within a period not less than 30 days and not longer than 90 days preceding the expiry of the licence validity.

### ***Transfer of the Right of Use of Numbers***

#### ***Article 76***

The holder of the licence for the use of numbers may transfer the right to the assigned numbers to a third party intending to use the transferred numbers for commercial purposes and not for its own needs solely by means of a written contract approved by the Agency.

The provision of paragraph 1 of this Article shall not refer to the numbers transferred by operators to their subscribers, nor to ported subscriber numbers in accordance with the provisions regulating the service of number portability under this Law.



In case of a status change pertaining to the holder of the licence for the use of numbers, that may occur in accordance with the law which regulates the legal status of undertakings, the transfer of the right of use of the assigned numbers may take place solely on the grounds of a written document approved by the Agency.

Notifications on approvals from paragraphs 1 and 3 herein, shall be made publicly available on the Agency's website.

### ***Revocation of Assigned Addresses and Numbers***

#### ***Article 77***

The Agency shall adopt a decision on revocation of the assigned numbers in case it is established that:

1) the licence for the use of numbers was issued on the basis of false data or incorrect documentation relevant to the process of decision-making;

2) the use of the assigned numbers is not in accordance with the Numbering Plan or the licence issued for the use of numbers;

3) the holder of the licence for the use of numbers, having received the dunning notice, has not paid the prescribed fee for the use of numbers in due time;

4) the holder of the licence for the use of numbers was banned from carrying out electronic communications activities in accordance with this Law, or by a final court judgement;

5) the holder of the licence for the use of numbers has renounced the right of use of the assigned numbers in writing;

6) the holder of the licence for the use of numbers ceased to exist and left no legal successors;

7) the holder of the licence for the use of numbers has not eliminated the irregularities detected in the process of inspection;

8) revocation of the assigned numbers is necessary for the reasons of compliance with the amendments to the Numbering Plan made with the aim of implementing international treaties or meeting the public interest which could otherwise not be met.

The holder of the licence for the use of numbers whose numbers have been revoked for reasons stated in paragraph 1 item 8) of this Article, shall be entitled to a replacement of numbers.

At the request of the entity referred to in paragraph 2 herein, the Agency shall assign new numbers taking into account the principle of proportionality, the protection of public interest and the economic impact resulting from the replacement of numbers.

### ***Database on Used Numbers***

#### ***Article 78***

The Agency shall keep and update the database on used numbers which shall in particular contain data on assigned numbers with relevant data on the terms and conditions of assignment and use, the geographical area of their use and the operators to whom the numbers have been assigned.

The Agency shall update and make publicly available the data referred to in paragraph 1 of this Article on its website, allowing the possibility of comprehensive browsing capacity.

### ***Number Portability***

#### ***Article 79***

An operator of publicly available telephone services (donor operator) shall enable subscribers of its services, upon their own request, to switch to the services of other operator

(receiving operator), to retain their assigned numbers at a specific location, in the case of geographic codes, or at any location in the case of non-geographic codes.

A request for the service of number porting shall be submitted by the subscriber to the receiving operator.

The request referred to in paragraph 2 herein shall also be considered a request for the annulment of the existing subscription contract between the subscriber and the donor operator related to the use of services the subject of which is the number requested for porting. The subscription contract shall be considered annulled at the moment of disconnection of the donor operator from the network.

In requesting the number porting service referred to in paragraph 2 herein, the subscriber is under the obligation to provide data on his/her identity, the number for which the service of number porting is requested and a statement certifying that all outstanding debts made until the moment of the annulment of the contract referred to in paragraph 3 herein have been acquitted, or otherwise the subscriber will be subject to temporary or permanent suspension of services provided by the receiving operator.

The receiving operator is under the obligation to remunerate the costs of the donor operator for the provision of number porting services.

The Agency shall manage the information system for number porting and keep the database of ported numbers, taking into account the protection of personal data, and shall prescribe the conditions for and the manner of the number porting procedure, as well as the fees for the number portability service stipulated herein.

The Agency may engage other legal entities for the purpose of information system management and timely update of the database of ported numbers.

In performing the procedure of number porting, the donor and receiving operators shall enter into mutual cooperation and cooperation with the Agency so as to ensure that the process of number porting shall not exceed one working day, and thus needlessly hinder the provision of services to subscribers, and shall refrain from actions aimed at aggravating or excessively prolonging the process of number porting.

### ***Single Emergency Call Number***

#### ***Article 80***

In accordance with the Numbering Plan, operator of publicly available telephone services shall enable all users to originate calls towards the single emergency call number “112” and other emergency numbers in the Republic of Serbia, free of charge, from any telephone set including public pay phones.

The operator referred to in paragraph 1 of this Article is under the obligation to, free of charge and to the extent allowed by technical capabilities, provide all available data on calls originated towards the single emergency number “112” or other emergency service numbers, in particular data on caller identification, calling number, time, duration and location of the call, to the emergency service call center.

**XIII RADIO -FREQUENCY SPECTRUM*****Radio-frequency Spectrum Management******Article 81***

The management and use of the radio-frequency spectrum as a scarce resource shall be based on the principles of rationality, efficiency, transparency and non-discrimination, and shall include the following:

- 1) planning of the allocation and assignment of radio-frequencies pursuant to relevant international agreements and recommendations and in line with the interests of citizens, the economy, and the security and defence policy of the country;
- 2) assignment of radio-frequencies according to the Allocation and Assignment Plans;
- 3) coordination of the use of radio-frequencies;
- 4) radio-frequency spectrum monitoring, identification and elimination of harmful interferences.

The Agency shall manage the radio-frequency spectrum and coordinate the use of satellite orbits in accordance with relevant international agreements, provisions set out under this Law and by-laws adopted in accordance with this Law.

The Agency shall establish cooperation with international organisations and administrations of other countries responsible for radio-frequency spectrum management, independently or through competent authorities.

***Radio-frequency Coordination and Notification******Article 82***

Prior to assignment, radio-frequencies designated for the use within specific border zones shall be coordinated with the neighbouring countries based on the agreements concluded between neighbouring countries on the coordination of radio-frequency use.

If necessary, radio-frequencies falling within specific radio-frequency bands shall be coordinated with the neighbouring countries and other interested countries, prior to their assignment.

The International Telecommunication Union shall be notified on the assignment of radio frequencies in case:

- 1) the use of radio-frequencies may cause harmful interference to the radiocommunications service of another country;
- 2) radio-frequencies are intended for the service of international radiocommunications; or
- 3) for the purpose radio-frequency protection on the international level.

***Radio-frequency Bands Allocation Plan******Article 83***

The Radio-Frequency Bands Allocation Plan (hereinafter: the Allocation Plan) shall determine the purpose of radio-frequency bands for individual radiocommunications services in accordance with relevant international agreements and recommendations, the interests of the citizens, the economy and the security and defence policy of the country.

The Allocation Plan shall include the following:

- 1) the range of radio-frequency bands;
- 2) the assignment of radio-frequency bands to one or more radiocommunications services or activities in accordance with the principle of technological neutrality;

- 3) basic conditions for the use of radio-frequency bands;
- 4) the grounds for the use of radio-frequencies and the manner of granting licences stipulated under Article 85 of this Law.

The Allocation Plan may specify different allocations and conditions and terms of use for different sub-bands within the same radio-frequency band.

The Government, upon the proposal set forth by the Ministry with the participation of the relevant autonomous province authority, shall adopt the Allocation Plan, drafted by the Agency.

During the procedure of drafting the Allocation Plan, the Agency shall conduct public consultations in line with the provisions stipulated under this Law and request defence, security and emergency services authorities to provide their comments regarding the Allocation Plan draft proposal.

### ***Radio-frequency Assignment Plans***

#### ***Article 84***

Radio-frequency Assignment Plans (hereinafter: Assignment Plans) shall include the terms and conditions for the assignment of radio-frequencies from the allocated radio-frequency bands, the assignment of radio-frequencies for different locations or regions for one or more radiocommunications services or activities, as well as any other technical conditions required for the use of radio-frequencies.

Assignment Plans shall be based on the Allocation Plan and other relevant international agreements and recommendations, taking into consideration the needs and requirements of users.

Assignment Plans shall be adopted by the Ministry with the participation of the relevant authority of the autonomous province, at the proposal of the Agency.

During the procedure of drafting of the Assignment Plans, the Agency shall conduct public consultations in line with the provisions stipulated under this Law and request defence, security and emergency services authorities to provide their comments regarding the Assignment Plan draft proposals.

### ***Use of Radio-frequencies***

#### ***Article 85***

Pursuant to the provisions stipulated under this Law, the use of radio-frequencies shall be granted:

- 1) on the basis of an individual licence issuance procedure, upon request or following the completion of the public bidding procedure;
- 2) on the basis of general authorisation issuance procedure;
- 3) for special purposes.

The Agency shall prescribe the terms and conditions pertinent to the use of radio-frequency spectrum for the purposes of amateur radio stations and radio stations used on board national and foreign aircrafts, trains, ships and other vessels, in accordance with the relevant international agreements and recommendations.

### ***The Use of Radio-Frequencies on the Basis of Individual Licences Granted at Request***

#### ***Article 86***

The right of use of radio-frequencies shall be acquired on the basis of an individual licence for the use of radio-frequencies (hereinafter: individual licence) which shall be issued at request, in

cases where the provisions of the Allocation Plan provide for such a manner of granting individual licences within a certain radio-frequency band.

An individual licence referred to in paragraph 1 of this Article shall be issued on the basis of a decision.

The decision from paragraph 2 of this Article shall be passed upon the receipt of the request submitted to the Agency.

The request from paragraph 3 of this Article shall include the following:

- 1) data on the identity of the applicant;
- 2) type of electronic communications network or service for which the assignment of radio-frequency is requested;
- 3) the radio-frequency the assignment of which is requested;
- 4) the reason and the purpose of use of radio-frequency;
- 5) period of time envisaged for the commencement of radio-frequency use;
- 6) the period for which the assignment of radio-frequency is requested;
- 7) technical solution which, depending on radiocommunications service and activity, includes in particular the data on geographic region of use and the locations of transmitters, calculation of signal range and service zones, the envisaged antenna system and emission characteristics, the manner of effective radio-frequency use, the assessment of the impact of radio-frequency use on the environment and the operation of other radiocommunications systems.

The request referred to in paragraph 3 of this Article shall be submitted in the form of request prescribed by the Agency, including the guidelines on compulsory elements of the technical solution from paragraph 4 item 6) of this Article, depending on the radiocommunications service and activities the technical solution refers to.

The adoption of the decision on requests from paragraph 3 of this Article shall be made in order of submission of requests, within 40 days from the day of the receipt of requests, except in cases when international agreements prescribe otherwise.

The request from paragraph 3 of this Article may be rejected if:

- 1) it is not in accordance with the Allocation Plan and Assignment Plans;
- 2) the required radio-frequencies are not available;
- 3) the use of required radio-frequencies may have harmful effects on the environment or cause harmful interference in the operation of other radiocommunications systems which cannot be prevented by means of introduction of special protection measures.

### ***Granting Individual Licences to Diplomatic-Consular Missions***

#### ***Article 87***

Foreign diplomatic-consular missions (hereinafter: Mission) are entitled to radio-frequency use on the basis of individual licences granted at their requests.

Individual licences from paragraph 1 of this Article shall be granted by the Agency, upon the request of a Mission, in a procedure stipulated under this Law and conducted in line with the official diplomatic protocol.

The fees and terms and conditions of radio-frequency use from this Article shall be determined on the principle of reciprocity, based on the opinion of the Ministry of Foreign Affairs and in accordance with the international agreements.

***Granting Individual Licences to Foreign Legal Entities******Article 88***

A foreign legal entity establishing business, informative, scientific, cultural, sports or any other cooperation with the relevant authorities, organisations or other entities in the country based on the provisions set out in relevant international agreements, shall be entitled to radio-frequency use based on individual licences granted at request.

The individual licence from paragraph 1 of this Article shall be granted by the Agency at the request of the foreign legal entity from paragraph 1 of this Article in a procedure prescribed by this Law.

The fees and terms and conditions of radio-frequency use from this Article shall be determined according to the provisions stipulated under this Law, except when stipulated otherwise in the relevant international agreements.

***Use of Radio-Frequencies Based on Individual Licences  
Granted in a Public Bidding Procedure******Article 89***

The right of use of radio-frequencies shall be acquired on the basis of an individual licence granted upon the completion of the public bidding procedure, in cases where this manner of granting individual licences is stipulated in the Allocation Plan due to limited availability of radio-frequencies within a specified radio-frequency band.

By virtue of its competencies or at an initiative of interested parties, the Agency shall have the power to decide on the fulfilment of terms and conditions for the issuance of individual licences through the public bidding procedure, and shall notify the Ministry about its decision.

Having received the notification on the decision referred to in paragraph 2 of this Article, the Ministry shall pass a by-law prescribing the minimum conditions for individual licence issuance upon the completion of a public bidding procedure, which shall in particular contain the number of individual licences that may be granted for a certain radio-frequency band, the period for which individual licences shall be granted, the lowest amount of the individual licence issuance fee, the conditions pertinent to the provision of coverage of a certain part of the territory or population and other minimum conditions related to the individual licence issuance.

The Agency shall adopt a decision on the initiation of a public bidding procedure for the issuance of individual licences within 15 days from the day the by-law referred to in paragraph 3 of this Article comes into force, and appoint the members of the Commission in charge of the public bidding procedure.

***Article 90***

In conducting the public bidding procedure for the issuance of individual licences, the Agency shall:

- 1) ensure the availability of the public bidding procedure to all interested parties on equal terms and publish a public invitation for the collection of bids;
- 2) set and make publicly available the decision-making criteria which shall be objective, proportionate, non-discriminatory and in line with the activities or services for which the individual licence is granted;
- 3) determine the compliance of the bidders with the terms and conditions laid down under this Law and other by-laws adopted in accordance with this Law;
- 4) adopt a decision on the selection of the most favourable bid on the basis of economic, technical and other criteria published in the public invitation for the collection of bids;

5) adopt and make publicly available a decision on the selection of the most favourable bid or the annulment of the public invitation for the collection of bids not later than four months upon the expiry of the deadline for the submission of bids.

The invitation referred to in paragraph 1, item 1) of this Article shall contain the following:

- 1) subject-matter of the individual licence;
- 2) deadline set for the participation in the public bidding procedure, which shall not be shorter than 45 days following the date of the publication of the public invitation for the collection of bids;
- 3) criteria for participation in the public bidding procedure;
- 4) manner of the submission of bids (using a code or the full name of the bidder);
- 5) information about the date, time and the place of opening the bids;
- 6) criteria for the evaluation of submitted bids and the manner in which the most favourable bid shall be determined;
- 7) the name of the person responsible for giving information relevant to the public bidding procedure.

The invitation referred to in paragraph 1, item 1) of this Article shall be published in the *Official Gazette of the Republic of Serbia*, one widely available international publication, at least one daily newspaper distributed on the whole territory of the Republic of Serbia, as well as on the Agency's website.

The one-off individual licence issuance fee shall be paid into the treasury of the Republic of Serbia upon the successful completion of the public bidding procedure.

### *Contents of the Individual Licence*

#### *Article 91*

The decision governing the individual licence issuance shall contain the data on:

- 1) the holder of the individual licence;
- 2) the assigned radio-frequencies;
- 3) the period of time for which the individual licence has been granted;
- 4) the deadline envisaged for the commencement of the assigned radio-frequency use;
- 5) the purpose for which the right of use of radio-frequency has been granted;
- 6) locations or coverage areas;
- 7) deadlines set for the notification of the Agency on the installed radio stations and technical inspections completed;
- 8) deadlines and the manner of verification of compliance with the terms and conditions of the individual licence issuance in cases where the individual licence has been granted in the public bidding procedure;
- 9) the manner ensuring the efficient and reasonable use of radio-frequencies;
- 10) technical and operational measures to be applied in order to avoid harmful interferences, ensure electromagnetic compatibility and limit the exposure of citizens to electromagnetic fields;
- 11) obligations related to the use of assigned radio-frequencies resulting from the relevant international agreements;
- 12) terms and conditions for the experimental use of assigned radio-frequencies.

The decision from paragraph 1 of this Article may also contain other data associated with the prescribed conditions relevant to the process of individual licence issuance or resulting from the relevant international agreements.

The holder of an individual licence shall inform the Agency about any change of the data from paragraph 1 item 1) of this Article within 30 days from the occurrence of the change.

***Validity and the Extension of Validity of an Individual Licence***

***Article 92***

An individual licence shall be granted for a period of ten years at the most.

The validity period of an individual licence may be extended under conditions related to granting new individual licences where such extension shall not exceed the validity period for which the new licence is granted and shall not necessitate the payment of the one-off licence issuance fee.

The holder of an individual licence shall submit a request for the extension of the validity of the individual licence to the Agency within a period of not less than 30 days nor longer than 90 days prior to the expiry of the validity period of the individual licence in question.

***Transfer of the Right of Use of Radio-frequencies***

***Article 93***

The right of use of radio-frequencies granted in the form of an individual licence can neither be renounced, nor leased nor transferred to a third party in any other way.

The provision referred to in paragraph 1 of this Article shall not refer to changes in the status of an individual licence holder which may occur in accordance with the law that regulates the legal status of undertakings.

In cases stipulated under paragraph 2 of this Article, a transfer of rights may be made solely on the basis of a written document approved by the Agency.

The Agency may refuse to give its approval to the document from paragraph 3 of this Article if it establishes that it would lead to the distortion of competition.

The data on approvals to documents from paragraph 3 of this Article shall be made publicly available on the Agency's website.

***Temporary Licence for the Use of Radio-frequencies***

***Article 94***

The right of temporary use of radio-frequencies, for the purpose of market or technical inspection of products and services, research or design, or for the purpose of organizing sports, cultural, entertainment or other events of limited duration, is acquired on the basis of a temporary licence for the use of radio-frequencies (hereinafter: temporary licence) and is granted by a decision.

The decision from paragraph 1 of this Article shall be adopted by the Agency on the basis of a reasonable request that meets the conditions set out in paragraph 1 of this Article.

The request from paragraph 2 of this Article shall be submitted in a form of request the contents of which are prescribed by the Agency.

Deciding on the requests from paragraph 2 of this Article shall be conducted in the order of submission, within 15 days from the day of the receipt of requests.

The Agency shall specify the appropriate validity period of the temporary licence which shall not exceed 60 days, as well as the corresponding terms and conditions for the assignment and use of radio-frequencies.

The request for the temporary licence issuance may be rejected if established the request in question was submitted primarily with the aim of avoiding the procedure for the individual licence issuance referred to in Articles 86 and 89 of this Law.



***Revocation of Assigned Radio-frequencies***

***Article 95***

The Agency shall adopt a decision on the revocation of the assigned radio-frequencies if it is established that:

- 1) the licence was issued on the basis of incorrect data or false documentation relevant to the licence issuance procedure;
- 2) the assigned radio-frequencies are not used in accordance with the terms and conditions set out in the Allocation Plan, Assignment Plan or the individual licence which has been granted;
- 3) the individual licence holder, having previously received the dunning notice, has not paid the prescribed fee for the use of radio-frequencies in due time;
- 4) the individual licence holder was banned from carrying out electronic communications activities in accordance with this Law, or by a final court judgement;
- 5) the individual licence holder has renounced the right of use of the assigned radio-frequencies in writing;
- 6) the individual licence holder ceased to exist and left no legal successors;
- 7) the licence holder for the use of radio-frequencies has not eliminated the irregularities discovered in the process of inspection;
- 8) the revocation of the assigned radio-frequencies is necessary for reasons of compliance with the amendments to the Allocation Plan or Assignment Plans made with the aim of implementing international agreements or meeting the public interest which could otherwise not be met;
- 9) the revocation of the assigned radio-frequencies is necessary in order to enable the implementation of projects related to spatial planning or environment protection, which could otherwise not be implemented;
- 10) the radio and television programme broadcasting licence was revoked from the individual licence holder by the competent broadcasting authority or that the validity period of the broadcasting licence has expired, in cases where the individual licence is granted as part of the radio and television programme broadcasting licence in line with the special by-law.

The holder of an individual licence whose radio-frequencies have been revoked for reasons stated in paragraph 1, items 8) and 9) of this Article, shall be entitled to a replacement or the reassignment of new radio-frequencies.

The Agency shall assign new radio-frequencies upon the receipt of the request referred to in paragraph 3 of this Article, taking into account the principle of proportionality, protection of public interests and economic consequences caused by the replacement of radio-frequencies.

***Use of Radio-frequencies on the Basis of General Authorisation***

***Article 96***

In case of minimal danger from interference or in case of coordinated radio-frequency bands, in particular if this is in accordance with the relevant international agreements and recommendations, radio-frequencies shall be used on the basis of a general authorisation.

Any person shall be entitled to the use of radio-frequencies which fall within the general authorization regime according to the Allocation Plan.

The Agency shall stipulate the use of radio-frequencies within the general authorization regime according to the agreements and recommendations referred to in paragraph 1 of this Article.

*Use of Radio-frequencies for Special Purposes**Article 97*

Authorities of the Republic of Serbia in charge of defence and security affairs, as well as emergency services, shall use the radio-frequency bands reserved for their exclusive use without the obligation of prior licence issuance procedure in accordance with the terms of use stipulated in the Allocation Plan.

The authorities from paragraph 1 of this Article shall notify the Agency in writing about the commencement and the end of the use of radio-frequencies.

At the request of the Agency, the authorities referred to in paragraph 1 of this Article shall provide a report on the scope and method of use or non-use of radio-frequencies to the Agency at least once a year.

The use of radio-frequencies for special purposes referred to in paragraph 1 herein shall not be subject to any fees.

The authorities referred to in paragraph 1 of this Article may use the radio-frequencies within the band not allocated for special purposes in line with the Allocation Plan, in the manner and in accordance with the terms and conditions pertinent to the assignment and use of these bands stipulated under this Law and by-laws adopted pursuant to this Law.

The radio-frequency usage fees from paragraph 5 of this Article shall be determined by the Agency in cooperation with the authorities from paragraph 1 of this Article, taking into account the public interest and the fact that the authorities in question fall within the category of budget users.

*Radio-frequency Spectrum Monitoring and Protection from Harmful Interference**Article 98*

The Agency shall perform the tasks of monitoring the use of the radio-frequency spectrum within the territory of the Republic of Serbia and shall publish a report thereon at least once a year, and shall, if necessary, monitor the selected radio-frequency bands.

The technical inspections and other tests aimed at determining the existence and source of harmful interference shall be carried out by the Agency or other entity entrusted with this task by the Agency.

The Agency shall monitor the radio-frequency spectrum for special purposes in cooperation with the authorities referred to in paragraph 1 of Article 97 of this Law.

The Agency shall monitor the radio-frequency spectrum allocated for distribution and broadcasting of media content in cooperation with the relevant broadcasting regulatory authority.

The Agency shall take measures to eliminate harmful interferences detected while monitoring the radio-frequency spectrum according to the provisions of this Law, and, if necessary, introduce inspection control measures, above all if unauthorised use of radio-frequency spectrum is detected.

The Agency shall take measures stipulated in paragraph 5 herein without delay in cases where the operation of defence and security authorities and emergency services is endangered, as well as the operation of aviation, maritime and radio-navigation radiocommunications services.

The Agency shall specify in greater detail the manner of monitoring the use of the radio-frequency spectrum, technical inspection and protection from harmful interferences.

***Database on the Use of Radio-frequency Spectrum***

***Article 99***

The Agency shall keep an updated database on the use of the radio-frequency spectrum which shall in particular contain data on assigned radio-frequencies and radio-frequency bands with relevant data on the terms and conditions of assignment and use, geographic regions of their use and the data on holders of individual licences and other radio-frequency spectrum users.

The Agency shall update and make publicly available the data from paragraph 1 of this Article on its website, allowing the comprehensive browsing capacity.

The Agency shall keep the updated database comprising the data on radio-frequency spectrum monitoring activities and technical inspections.

**XIV. MEDIA CONTENT DISTRIBUTION AND BROADCASTING**

***Cooperation of the Agency with the Broadcasting Authority***

***Article 100***

In determining the conditions and methods of use of radio-frequencies for media content distribution and broadcasting, the Agency shall cooperate with the broadcasting authority.

When a special law prescribes that the licence for the use of radio-frequencies is covered by the licence to broadcast programme, the Agency shall grant an individual licence upon request of the authority in charge of broadcasting, in accordance with the provisions of this Law and for a period determined in the licence for broadcasting programme.

***Obligation of Broadcasting***

***Article 101***

At request of the broadcasting authority, the Agency designates an operator of electronic communications network for media content distribution and broadcasting, who shall distribute one or more radio and/or television programmes at the national, provincial, regional or local level, when:

- 1) a significant number of end-users use the electronic communications network of that operator as the only or primary way of receiving media content, and
- 2) it is necessary in order to achieve the clearly set objectives of public interest, as established by the broadcasting authority, taking into account the principles of proportionality and transparency.

***Special Obligation of Access Provision***

***Article 102***

The Agency may impose on the operator of electronic communications network for media content distribution and broadcasting the obligation to enable, under acceptable and non-discriminatory conditions, access to application programming interfaces and electronic programme guides to the extent necessary for the purpose of offering services to end-users.

***Conditional Access Services***

***Article 103***

The operator of electronic communications network for media content distribution and broadcasting who offers services of conditional access to media content (hereinafter: conditional

access service operator) shall provide technical possibilities for full control of offering media content via such a system.

The conditional access services operator shall be obliged to offer all electronic media broadcasters, under fair, reasonable and non-discriminating terms, technical services which give their subscribers the access to media content by means of conditional access devices

The conditional access services operator may not hinder the reception of media content which are distributed and broadcast without conditional access.

The conditional access services operator shall keep separate accounting of business activities related to conditional access services.

Holders of industrial property rights to conditional access devices and systems shall grant licences for use of these devices and systems to manufacturers of consumer equipment under fair, reasonable and non-discriminating terms, which shall not prevent the manufacturers from including in the same product interfaces allowing connection with other access systems or devices specific for other access systems, unless this threatens the security of operation of the conditional access system.

### ***Analogue to Digital Television Programme Broadcasting Switchover***

#### ***Article 104***

At the Agency's proposal prepared in cooperation with the broadcasting authority, the Ministry shall pass a by-law on the switchover from analogue to digital television programme broadcasting and the access to multiplex in terrestrial digital broadcasting.

The by-law in paragraph 1 of this Article shall regulate in particular:

- 1) the manner and time schedule of the switchover;
- 2) the requirements and timetable for setting up the network for digital TV programme distribution on the territory of the Republic of Serbia;
- 3) multiplex structure requirements;
- 4) the scope of use of radio-frequencies necessary for successful switchover to digital television programme broadcasting.

According to the decision on its establishment and the by-law from paragraph 1 of this Article, the public enterprise for managing the broadcasting infrastructure shall establish an electronic communications network for multiplexing, distributing and broadcasting digital television programme.

For the purpose of establishing the network from paragraph 4 of this Article, the Public Enterprise "Broadcasting Infrastructure" shall be granted an individual licence for the use of radio frequencies by the Agency, pursuant to the by-law from paragraph 1 of this Article.

Public Enterprise "Broadcasting Infrastructure" shall give the holders of the licence for television programme broadcasting access to the multiplex within the network from paragraph 4 of this Article, in accordance with the granted licences for programme broadcasting.

Until the completion of the analogue to digital switchover process at the latest, upon proposal of the Ministry and in cooperation with the electronic communications authority of the autonomous province, the Government shall determine the reallocation of the freed terrestrial digital broadcasting radio-frequency band, and the provision of broadband services (digital dividend).

In the procedure of drafting the by-law from paragraph 6 of this Article, the Ministry shall conduct public consultations not shorter than 30 days.

Granting of individual licences according to the by-law from paragraph 6 of this Article shall be in accordance with the provisions of this Law.

## **XV. PROTECTION OF RIGHTS OF USERS AND SUBSCRIBERS**

### ***Contract between the Operator and the User***

#### ***Article 105***

Mutual rights and obligations of operators and users shall be regulated by a contract concluded in writing.

Notwithstanding the elements prescribed by law which regulates contractual obligations, the contract from paragraph 1 of this Article shall include the following:

1) specification of services (package contents), including in particular the data on the possibility of originating calls to emergency services, conditions for access and use of services (including limitations), minimum quality of service provision and measures taken for the prevention of excessive network load, time needed for the commencement of service provision, maintenance and support service provision, and the limitations in the use of terminal equipment;

2) provisions on the treatment of personal data (in particular concerning public telephone directories) and traffic and location data, during and after the expiry of the validity period of the contract;

3) information on prices and tariffs and the manner in which an up-to-date information on the applied tariffs and maintenance costs may be obtained, as well as manners of payment and additional expenses related to the offered manners of payment;

4) validity period of the contract, terms and conditions of renewal, and/or contract cancellation, including special conditions for the use of services related to the offered promotional advantages, number portability service fees, temporary suspension or permanent termination of service provision and termination of contractual agreements with and without the payment of expenses associated with termination (in particular concerning terminal equipment);

5) fees and terms and conditions of recovery of funds applied in cases when the agreed levels of service provision quality have not been met;

6) the manner of submitting and resolving complaints;

7) the measures an operator may apply for the purpose of maintaining the security and integrity of networks and services, and the control of unlawful content transfer.

The elements referred to in paragraph 2 of this Article shall also be included in a contract between the user and the operator which does not provide the services of connection or access to the public electronic communications network.

### ***Information on the Terms and Conditions of a Contract and Service Price***

#### ***Article 106***

The operator shall provide services in a manner which will clearly and unambiguously inform users about the terms and conditions of the contract, and in particular on the elements stipulated in paragraph 2 of Article 105 herein.

The pricelist of services, depending on the offered types of services, shall include: the amount of the one-off connection fee, the amount of the monthly fee for access to electronic communications network or service, the accounting unit and tariff interval, description of special conditions for access to confidential content or value added services, information on maintenance costs and available service packages, information on discounts, and other provisions of relevance to

a certain service.

The operator shall make the terms and conditions and the pricelist publicly available in an appropriate manner.

The operator shall inform the subscribers about the terms and conditions of the contract and the prices, including all amendments, without delay and in an appropriate manner, and shall forward them to the Agency on the day they come into force at the latest.

### ***Amendments to Contract Terms and Conditions***

#### ***Article 107***

An operator shall notify the subscriber of its intention to unilaterally amend the contract at least one month prior to adopting the amendments to the contract and about the right of the subscriber to cancel the contract before the expiry of the contract term.

Having received the notification from paragraph 1 of this Article, the subscriber shall be entitled to cancel the contract without paying any expenses associated with the cancellation, if the announced unilateral amendments essentially change the terms and conditions under which the contract was concluded, in a manner which is not in favour of the subscriber, in particular concerning the specification of services (package content) and the conditions for the use of services associated with the offered promotional advantages.

The Agency may prescribe the contents of the notification referred to in this Article.

### ***Value Added Services***

#### ***Article 108***

The operator providing value added services shall publish in advance a detailed description of the service and the total price of the overall service or the price of service components separately.

The Agency shall, in its Rules, specify in greater detail the obligations of the operator referred to in paragraph 1 of this Article, particularly taking into account the announcement of services, the manner of service price calculation and payment, the personal data processing manner, the traffic and location data, the control of unlawful content transfer and resolution of complaints, taking into consideration the protection of user interests.

### ***Quality of Services***

#### ***Article 109***

For the purpose of ensuring quality in the provision of publicly available electronic communications services and the protection of users, the Agency shall be authorised to:

- 1) specify in detail the quality parameters of certain publicly available services, and the manner of notification of consumers about the offered service quality;
- 2) determine the minimum quality for the provision of certain services by the public communications network operator.

### ***Ensuring the Availability of Service for Persons with Disabilities***

#### ***Article 110***

The operator of publicly available electronic communications service shall, to the extent deemed technically feasible, ensure equal availability of its services to persons with disabilities.

The Agency may impose special obligations on the operator from paragraph 1 of this Article concerning the provision of availability of electronic communications services to the persons with

disabilities.

***Database of Prices, Conditions of Access and Use, and Quality of Public Communications Networks and Services***

***Article 111***

The Agency shall keep an updated database of prices, conditions of access and use (including limitations), and the quality of public communications networks and services.

The Agency shall update and make publicly available the data from paragraph 1 of this Article on its website providing the possibility of comprehensive database browsing capacity.

***Itemised Billing***

***Article 112***

With the aim of ensuring simple verification and cost control of the provided services, the operator shall, upon user's request, issue a bill containing a detailed specification of provided services with the calculation of charges for each individual service.

The data referred to in paragraph 1 of this Article shall not comprise data about free-of-charge calls and calls to emergency services, nor data incompatible with provisions regulating personal data protection.

***Subscribers' Complaints***

***Article 113***

A subscriber may file a complaint to the operator in writing, referring to the amount charged for the provided service or referring to the quality of the provided service and may seek indemnification in line with the contractual provisions related to the quality of the provided service lower than agreed.

The deadline for filing a complaint from paragraph 1 of this Article shall be 30 days following the receipt of the service bill, in case the complaint refers to the amount charged for the provided service, or within 30 days from the provided service in cases where the complaint refers to the provided service quality.

The subscriber is under the obligation to pay the undisputed amount of the bill or, in cases where the entire amount of the bill is disputed, the average monthly amount of the bills received in a preceding three-month period.

The operator shall not be liable for indemnification referred to in paragraph 1 of this Article if the quality of the provided service is lower than the prescribed or agreed level of quality due to objective causes that could not be predicted, avoided or eliminated (force majeure), and due to maintenance of networks and services announced in good time.

Within 15 days from the date of the receipt of the complaint, the operator shall reply in writing to the subscriber, accepting a well-founded indemnification request pursuant to contractual provisions governing service provision if the quality of the provided service is lower than agreed quality level, or rejecting a request and stating facts and evidence of relevance to the determination of the amount of charges payable for the provided services or the provided services quality.

The subscriber whose complaint has been rejected may address the Agency or another authority to mediate in extrajudicial dispute resolution or initiate court proceedings at a court of law within 15 days from the day of the receipt of the operator's reply to the complaint, or 15 days from the expiry of the deadline within which the operator was under the obligation to declare his stand concerning the complaint.

The operator must not suspend the provision of services pertinent to incoming calls or calls to emergency services nor disconnect the subscriber terminal equipment from its electronic communications network if the complaint was filed by the subscriber who regularly paid the bill referred to in paragraph 3 of this Article until the expiry of the deadline for the initiation of extrajudicial or court proceedings from paragraph 6 of this Article, or until extrajudicial or court proceedings from paragraph 6 of this Article have been completed.

### ***Cost Control***

#### ***Article 114***

In accordance with technical capabilities, the operator of publicly available telephone services is under the obligation to ensure, in a simple way and free of charge, the provision of the following services pertinent to cost control:

- 1) ban of outgoing calls and sending electronic messages in case the subscriber's monthly costs of these services exceed the pre-determined amount;
- 2) ban of certain types of outgoing calls, and originating calls or sending electronic messages to certain types of numbers.

### ***Call Identification***

#### ***Article 115***

The operator providing calling-line identification services shall ensure that calling users are provided with the possibility to prevent the display of outgoing calling-line identification, on a per-call basis and that subscribers have this possibility on a per-line basis, free of charge and in a simple manner.

The operator providing calling-line identification services shall ensure that the subscriber is provided with the possibility to block the display of calling-line identification of incoming calls, free of charge for reasonable use of this function.

The operator providing calling-line identification services shall ensure that the subscriber is provided with the possibility to reject incoming calls with concealed identification.

The operator providing the service of connected line identification shall ensure that the called subscriber is provided with the possibility to prevent the display of the connected line identification to the calling user or subscriber in a simple way and free of charge.

The provision of paragraph 1 of this Article shall also apply to international outgoing calls, and the provisions of paragraphs 2 to 4 of this Article shall apply to international incoming calls as well.

The provision of paragraph 1 of this Article shall not apply to calls to emergency services.

The operator shall be entitled to temporarily suspend the possibility from paragraph 1 of this Article for the purpose of detecting and preventing malicious or nuisance calls.

The operator providing calling-line or connected line identification service is under the obligation to make publicly available the information on the possibilities and limitations from this Article.

### ***Malicious or Nuisance Calls***

#### ***Article 116***

The operator to which the subscriber reported and described in writing the manner and/or the content, tentative date and time of the malicious or nuisance call, shall record and store data on incoming call identification, date and time of the call or the attempt to establish such calls.



If the operator establishes, on the basis of the information set out in the report referred to in paragraph 1 of this Article, that the malicious or nuisance call has been originated from a number of its subscriber, he shall send a warning to that subscriber, and/or, in case of repeated disturbance, take other appropriate measures for the prevention of further disturbances.

If the operator establishes, on the basis of the information set out in the report referred to in paragraph 1 of this Article, that the malicious or nuisance call has been originated from the number of a subscriber of another operator's network, he shall forward the nuisance call report containing the information referred to in paragraph 1 of this Article to the subscriber's operator in order for that operator to send his subscriber a warning, and/or, in case of repeated disturbance, take other appropriate measures for the prevention of further disturbances.

Operators must cooperate with each other for the purpose of tracking and discovering malicious or nuisance calls and, in particular, for the exchange of data and acting upon the forwarded nuisance call reports referred to in paragraph 3 of this Article.

### ***Barring of Automatic Call Forwarding***

#### ***Article 117***

The operator shall ensure that its subscribers are provided, in a simple way and free of charge, with the possibility of barring of automatic call forwarding towards their terminal devices which was made by a third party.

### ***Unsolicited Electronic Communications***

#### ***Article 118***

The use of automated calling systems, with or without human intervention, facsimile machines, electronic mail or other types of electronic messages for the purpose of direct advertising of sale of products or services may only be allowed with the prior consent of the subscriber.

If a physical or legal entity has, during sale of their products and services, obtained directly from the recipients their contact data and consent to use such data for the purpose of direct advertising, they may use them for the purpose of direct advertising of their similar products and services, provided that the customer is given the opportunity to object, in a simple manner and free of charge.

Direct advertising disguising or concealing the identity of the sender of electronic mail or other forms of electronic messages, as well as direct advertising which does not include the indication of an electronic address and/or a number to which the recipient of the message may send, free of charge, a request for the termination of such communication, shall be prohibited.

#### ***Article 119***

The operator shall offer to the user the possibility of filtering incoming and/or outgoing unsolicited and harmful electronic mail messages, and the opportunity to turn on and off and/or configure these filters in a simple manner.

The operator shall, in an appropriate and publicly available manner, publish the electronic address which users may use to report abuse, and at the latest within 5 days from the day of receipt of the complaint via electronic mail, respond to a complaint concerning the abuse of electronic mail.

The operator shall publish the electronic address for reporting unsolicited and harmful electronic messages.

When the operator receives proof that an unsolicited electronic message has been sent or that the service has been abused, it shall establish the facts of the case and, depending on the degree

of abuse, warn the subscriber or temporarily disable the use of services and inform the user thereof without delay.

In case of repeated abuse, the operator is authorised to prevent the subscriber from using the service on a permanent basis and terminate the contract on the use of services.

### ***Personal Subscriber Data in the Public Directory***

#### ***Article 120***

The operator providing telephone directory enquiry services shall notify a subscriber of telephone services, free of charge, about the intention to include his personal data in a publicly available directory of subscribers in printed or electronic form, about its purpose, the availability of personal data through information services, and possibilities of browsing through subscriber personal data by third parties by means of a search engine integrated into the software of the electronic version of the directory.

Having received the notification referred to in paragraph 1 of this Article, the subscriber is entitled to refuse to give consent for the inclusion of his/her personal data in the publicly available telephone directory.

The operator from paragraph 1 of this Article shall provide the subscriber whose personal data are in a publicly accessible telephone directory with the possibility to check or correct the data, and the possibility to withdraw the given consent, or to have personal data deleted from the publicly available telephone directory in a simple way and free of charge.

The operator referred to in paragraph 1 of this Article shall obtain a subscriber's consent for using the telephone directory for any purpose other than establishing contact with the subscriber on the basis of the subscriber's name and surname or company name or a minimum set of other identity parameters.

The provision of paragraphs 2 and 3 of this Article shall apply to legal entities to the extent in which they are not obliged to make their subscribers' numbers available to the public, whereas the provision of paragraph 4 of this Article shall apply to legal entities without restrictions.

### ***Availability of Data in the Public Telephone Directory***

#### ***Article 121***

The operator providing publicly available telephone services shall:

- 1) compile and keep an updated public telephone directory with data on its subscribers;
- 2) provide its users with access to telephone operator services and public telephone directories.

The operator from paragraph 1 of this Article shall act upon every reasonable request for access to data from paragraph 1 item1) of this Article, under objective and non-discriminatory conditions, in accordance with the provisions of this Law and the law that regulates the personal data protection.

The obligation from paragraph 2 of this article refers in particular to the requests of operators of public telephone directories who compile comprehensive publicly available telephone directories with data on all subscribers of publicly available telephone services in the Republic of Serbia.

The Agency shall prescribe in detail the conditions concerning access and use of data from paragraph 2 of this Article.

### ***Traffic Data Processing***

#### ***Article 122***

The operator of public communications networks or the operator of publicly available electronic communications services who processes and keeps traffic data of subscribers and users is under the obligation to erase these data or render the person the data refer to unrecognizable when traffic data cease to be necessary for communications transmission, with the exception of:

- 1) the data necessary for billing services or interconnections, which may be processed until the expiry of the statutory time limit for filing bill complaints or enforcement of collection;
- 2) the data used by the operator for the purpose of marketing and sale of services, with the previously obtained consent of persons the data refer to, and for value added services, to the extent and for the time necessary;
- 3) data withheld pursuant to the provisions of this Law.

Prior to the commencement of traffic data processing from paragraph 1 item 1) of this Article and prior to obtaining the consent referred to in paragraph 1 item 2) of this Article, the operator shall inform the subscriber or user about the types of traffic data which shall be processed and the duration of such processing.

The person who has given consent for data processing referred to in paragraph 1 item 2) of this Article may withdraw such consent at any time.

The processing of traffic data referred to in paragraph 1 of this Article shall be conducted only by persons who, for the needs of operators, handle billing or network management, customer questions, fraud detection, marketing and sale of electronic communications services, and provide value added services, to the extent necessary for carrying out the abovementioned activities.

The provisions of paragraphs 1 and 4 of this Article shall not apply to the competencies of the Agency and other relevant state authorities to obtain insight into network traffic data, of significant relevance to dispute resolution, especially in relation to service billing or interconnection disputes.

### ***Location Data Processing***

#### ***Article 123***

The operator of public communications networks and publicly available electronic communications services may process user location data which are not traffic data, only in cases where the persons who these data refer to are made anonymous or with their consent, in the manner and for the duration necessary for the provision of value added services, to the extent and for the time necessary for these purposes.

The provision of paragraph 1 of this Article shall not refer to the location data retained pursuant to provisions of this Law.

The operator shall inform the user and subscriber, prior to obtaining the consent referred to in paragraph 1 of this Article, of the types of location data which shall be processed, of the purpose and duration of the processing and whether the data will be transmitted to third parties for the purpose of providing value added services.

The person may withdraw his/her consent for the processing of location data at any time.

The operator shall offer the person that granted his/her consent for the location data processing referred to in paragraph 1 of this Article, the possibility to, using a simple means and free of charge, temporarily reject the location data processing for each network connection or communication transmission.

The location data processing referred to in this Article shall be restricted to authorised persons of the operator, or to authorised persons of a third party providing the value added service to the extent necessary for providing the value added service.

## **XVI. SECURITY AND INTEGRITY OF PUBLIC COMMUNICATIONS NETWORKS AND SERVICES**

### ***Article 124***

In order to ensure the security and integrity of public communications networks and services, confidentiality of communications, and protection of personal, traffic and location data, the operator shall take adequate technical and organisational measures, suitable for the existing risks, and in particular measures for the prevention and minimisation of the effects of security incidents on users and interconnected networks, as well as measures for ensuring the continuity of operation of public communications networks and services.

If the operator provides the service using some other operator's electronic communications network, associated facilities or services, it shall cooperate with that operator to ensure the security and integrity of public communications networks and services.

In case of a particular risk related to the violation of the security and integrity of public communications networks and services (unauthorised access, significant loss of data, violation of the confidentiality of communications, personal data security, etc.), the operator shall inform subscribers of such risk and, in case the risk lies outside the scope of measures to be taken by the operator, of possible means of protection and costs related to the implementation of these measures.

### ***Article 125***

The operator shall inform the Agency of any violations of security and integrity of public communications networks and services, that significantly affected their operation, and particularly on violations that caused infringement of the personal data protection or privacy of subscribers or users.

The Agency shall be authorised to inform the public on the infringement of security and integrity from paragraph 1 of this Article or to require from the operator to do it himself, when it assesses that publication of such information is in the public interest.

## **XVII. CONFIDENTIALITY OF ELECTRONIC COMMUNICATIONS, LAWFUL INTERCEPTION AND DATA RETENTION**

### ***Confidentiality of Electronic Communications***

### ***Article 126***

Interception of electronic communications that reveals the content of communications shall not be permitted without the prior consent of the user, except for a definite time and based on the court decision, if necessary for criminal proceedings or the protection of security of the Republic of Serbia, in a manner prescribed by law.

The provision stipulated in paragraph 1 of this Article shall not prevent recording of communications and the related traffic data carried out for the purpose of providing evidence of commercial transactions or other business relations, in which both parties are aware, must be aware of or have been explicitly warned that the communications may be recorded.

Use of electronic communications networks and services to store or gain access to user data stored in the terminal equipment of subscribers or users shall be allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information about the

purpose of data collection and processing, in accordance with the laws governing personal data protection, and is also given an opportunity to refuse such processing.

The provision of paragraph 3 of this Article shall not prevent any technical storage or access to data for the purpose of transmission of communication over electronic communications networks or provision of services explicitly requested by the user.

### ***Lawful Interception of Electronic Communications***

#### ***Article 127***

The operator shall enable lawful interception of electronic communications referred to in paragraph 1 of Article 126 of this Law.

Relevant state authority which conducts lawful interception shall keep records on intercepted electronic communications which in particular include certain documents stipulating legal foundation for interception, the date and time of interception, and keep these records as confidential, pursuant to the law governing the confidentiality of data.

When the relevant state authority which conducts lawful interception of electronic communications is not capable of conducting lawful interception of electronic communications without access to the premises, electronic communications network, associated facilities or electronic communications equipment of the operator, the operator from paragraph 1 of this Article shall keep records of the received requests for interception of electronic communications, which shall in particular include identification of the authorised person in charge of interception, the date and time of the interception, and keep these records as confidential, in accordance with the law which regulates the confidentiality of data.

Pursuant to the provisions stipulated herein, for the purpose of meeting the obligation from paragraph 1 of this Article, the operator shall, at its own expense, provide necessary technical and organisational conditions (devices and program support), and forward evidence to substantiate the abovementioned to the Agency.

Upon obtaining the opinions of the ministry in charge of judiciary affairs, the ministry in charge of internal affairs, the ministry in charge of defence affairs, Security and Information Agency and the authority in charge of the personal data protection, the Ministry shall prescribe in detail the requirements for devices and program support from paragraph 4 of this Article.

### ***The Obligation of Data Retention***

#### ***Article 128***

The operator shall retain data on electronic communications from paragraph 1 of Article 129 of this Law (hereinafter: retained data) for the purpose of conducting investigations, crime detection and criminal proceedings, in accordance with the law which regulates criminal proceedings, as well as for the purpose of protecting national and public security of the Republic of Serbia, according to the law which governs the operation of security services of the Republic of Serbia and the operation of the authorities in charge of internal affairs.

The operator from paragraph 1 of this Article shall retain the data in their authentic form or as data processed in the course of electronic communications activities.

The operator from paragraph 1 of this Article need not retain data not produced or processed by it.

The operator from paragraph 1 shall keep the retained data for 12 months after the communication has taken place.

The operator shall retain data in such a manner that they can be accessed without delay, that

they can be provided at request of the relevant state authority without delay, pursuant to paragraph 1 of this Article.

The relevant state authority which accesses and/or which the retained data are provided for, shall keep records on the access and/or provided retained data that shall include in particular: reference to the document stipulating the legal foundation for access, and/or provision of retained data, date and time of access, and/or provision of retained data, and also keep these records as confidential, pursuant to the law which governs data confidentiality.

When the relevant state authority is unable to access retained data without access to the premises, electronic communications network, associated facilities or electronic communications equipment of the operator, the operator from paragraph 1 of this Article shall keep records of the received requests for access and/or provision of retained data, which shall include in particular the identification of the authorised person who has accessed the retained data and/or who the retained data were provided to, reference to the document stipulating legal foundation for access and/or provision of retained data, as well as to keep these records as confidential, in accordance with the law which governs data confidentiality.

### ***Categories of Retained Data***

#### ***Article 129***

The obligation of the operator from paragraph 1 of Article 128 of this Law shall refer to the data necessary for:

- 1) tracing and identifying the source of a communication;
- 2) identifying the destination of a communication;
- 3) determining the beginning, duration and end of a communication;
- 4) identifying the type of communication;
- 5) identifying users' terminal equipment;
- 6) identifying the location of the users' mobile terminal equipment.

The obligation to retain data from paragraph 1 of this Article shall also include the data on unanswered calls, but it shall not include the data on unsuccessful calls.

Data revealing the content of a communication may not be retained.

Upon obtaining the opinions of the ministry in charge of the judiciary affairs, the ministry in charge of internal affairs, the ministry in charge of defence affairs, Security and Information Agency and the authority in charge of the personal data protection, the Ministry shall prescribe in detail the requirements for retaining data from paragraph 1 of this Article.

### ***Protection of Retained Data***

#### ***Article 130***

Concerning the protection of retained data, the operator shall particularly ensure:

- 1) that the retained data be of the same quality and subjected to the same security and protection measures as the data in electronic communications network of the operator;
- 2) that the retained data be protected in an adequate manner from accidental or unpermitted destruction, accidental loss or modifications, unauthorised or illegal storing, processing, accessing or revealing, in accordance with the law governing the personal data protection and/or law on data confidentiality in case of data kept and provided in accordance with paragraph 5 of Article 128 of this Law;
- 3) that the access to retained data be appropriately limited only to authorised persons who have access to retained data in accordance with paragraph 5 of Article 128 of this Law;
- 4) that retained data be destroyed after the expiry of the time limit from paragraph 4 of

Article 128 of this Law, except the data that are kept and provided in accordance with paragraph 5 of Article 128 of this Law.

For the purpose of meeting the obligation from paragraph 1 of this Article, the operator shall provide necessary technical and organisational conditions at its own expense, and forward evidence to substantiate the abovementioned to the Agency, in accordance with the provisions of this Law.

When data are submitted in accordance with paragraph 5 of Article 128 of this Law, the authority in charge of the personal data protection and the authority in charge of implementing the law which regulates data confidentiality, shall supervise that the obligations of the operator from paragraph 1 of this Article are met.

## **XVIII. VERIFICATION OF OPERATORS' ACTIONS AND SUPERVISION THROUGH INSPECTION**

### *Competencies of the Agency*

#### *Article 131*

Operators are under the obligation to perform electronic communications activities in accordance with the prescribed general requirements for performing such activities, special obligations designated for operators with SMP, conditions prescribed by licences for the use of numbers, individual licences for the use of radio-frequencies, and other obligations stipulated under this Law and by-laws adopted in accordance with this Law.

The Agency shall be authorised to request data and information from operators, which are necessary for the verification of their actions in accordance with the obligations in paragraph 1 of this Article, and for measuring and testing the operation of electronic communications networks and services, associated facilities, electronic communications network and terminal equipment.

The Agency shall carry out the measuring and testing procedures from paragraph 2 of this Article through its monitoring stations and organisational units (regional units), and/or persons authorised to perform measurements and tests.

Should the Agency establish that an operator's performance is not in accordance with the obligations from paragraph 1 of this Article, it shall inform the operator about it and set a time limit for the operator to declare his opinion on the determined irregularities and/or eliminate them and notify the Agency.

The time limit from paragraph 4 of this Article may not be shorter than 8 days from the day the operator receives the request, except in cases where the Agency establishes major or recurrent violations of prescribed obligations.

Should the Agency discover that the operator has not eliminated the observed irregularities within the given time limit, it shall file a report with the inspectors of the Ministry.

### *Inspection*

#### *Article 132*

The Ministry shall be in charge of inspecting the implementation of this Law, by-laws that govern electronic communications activity, and international agreements within the electronic communications sector, through its electronic communications inspectors (hereinafter: inspector).

Inspection surveillance of the implementation of this Law and regulations which regulate electronic communications activity on the territory of the autonomous province shall be conducted by the autonomous province through its authorities.

The tasks from paragraph 2 of this Article shall be conducted by the autonomous province

as entrusted tasks.

### ***Article 133***

The inspector shall be independent within limits of authority determined by law and other by-laws that govern the jobs of inspection, and he/she shall be personally responsible for his/her work.

The inspector shall institute proceedings concerning reports of the Agency, citizens, enterprises and other organisations, and inform the submitter of the report about the results of the proceedings.

The inspector may not supervise electronic communications network or service, associated facilities, electronic communications equipment and terminal equipment, if he/she has participated in their design, construction, installation or production.

In the course of conducting the inspection, the inspector may engage a person authorised for performing measurements and tests for the jobs of measuring and testing of electronic communications networks and services, associated facilities, electronic communications equipment and terminal equipment.

### ***Special Competencies of Inspectors***

#### ***Article 134***

Apart from the competencies resulting from the law which governs the job of inspection, an inspector shall be authorised to verify:

- 1) actions of operators in accordance with prescribed general conditions for electronic communications activities, special obligations of designated operators with SMP, conditions prescribed by licences granted for the use of numbers, individual licences for the use of radio-frequencies, and other obligations determined by this Law and by-laws passed on its basis;
- 2) operation of electronic communications network and services, associated facilities, electronic communications equipment and terminal equipment, and compliance with the prescribed technical and other requirements;
- 3) whether the radio-frequency spectrum is used in accordance with this Law;
- 4) actions of holders of individual licences and other users of radio-frequency spectrum in reference to obligations determined by licences, this Law, by-laws adopted in accordance with this Law, and relevant international agreements;
- 5) the existence of harmful interferences in the operation of an electronic communications network;
- 6) actions of operators related to the implementation of measures of personal data and privacy protection, provision of security and integrity of public communications networks and services, and enabling lawful interception of electronic communications and access to retained data.

### ***Supervision Measures***

#### ***Article 135***

Should irregularities, deficiencies or omissions be detected in the course of inspection of the implementation of this Law and by-laws adopted in accordance with this law, the inspector shall issue a resolution on:

- 1) imposing measures for the elimination of the established irregularities, deficiencies or omissions, and setting the time limit for their elimination;
- 2) taking temporary measures, including imposing the ban on work, sealing and confiscating of electronic communications equipment or its part, in particular in case of



unauthorised use of the radio-frequency spectrum, use contrary to prescribed conditions of use or when it is established that the functioning of electronic communications equipment is a direct and serious threat to public security or that it endangers the environment;

3) temporarily banning the activity by shutting down the premises where the activity takes place or in another appropriate manner, in cases where supervision is prevented, where the activity is unauthorised or where the previously introduced measures from paragraph 1 item 1) of this Article are not implemented, and determining the duration of the temporary ban of activity during which these persons are under the obligation to eliminate the unlawful irregularities which are the cause of the imposed measures.

A complaint against the inspector's resolution may be submitted to the Ministry, within 8 days from the day of receipt of the resolution.

The complaint against the inspector's resolution shall not postpone the execution of the resolution.

The resolution of the Ministry shall be final in an administrative procedure and it may be the foundation for initiating administrative litigation.

The inspector shall notify the Agency about the determined irregularities, deficiencies or omissions in the implementation of this Law and by-laws adopted in accordance with this Law, and, where necessary, propose to the Agency to take measures falling within its jurisdiction.

### ***Entities Authorised for Measuring and Testing***

#### ***Article 136***

An undertaking, enterprise or any other legal entity may carry out measurements and test the operation of electronic communications networks and services, associated facilities, electronic communications networks and terminal equipment, if it meets the conditions of relevance to staff, equipment and premises.

At the proposal of the Agency, the Ministry shall regulate in detail the conditions that shall be met by entities from paragraph 1 of this Article.

The Ministry shall issue a resolution on the fulfilment of conditions from paragraph 1 of this Article, at the request of the entity from paragraph 1 of this Article (hereinafter: authorisation for measurements and tests).

Dues shall be paid for the issuance of the resolution from paragraph 2 of this Article, in accordance with the law which governs administrative dues.

The authorisation for measurements and tests may be revoked if it is subsequently determined that an undertaking, enterprise or other legal entity does not meet the prescribed conditions or that the resolution was issued on the grounds of untruthful and incorrect data.

The resolution referred to in paragraphs 2 and 5 of this Article shall be final.

The Ministry shall keep an updated register of issued authorisations for measurements and tests and make it publicly available on its website.

## **XIX. PENAL PROVISIONS**

#### ***Article 137***

A fine for an offence ranging from 1,000,000 to 2,000,000 dinars shall be imposed on a legal entity which:

1) designs, constructs or installs, uses and maintains electronic communications networks and associated facilities contrary to Article 42 of this Law;

2) acts contrary to the provisions of Article 126 of this Law concerning the protection of confidentiality of electronic communications;

3) fails to act in accordance with the provisions of this Law concerning lawful interception of electronic communications (Article 127);

4) fails to act in accordance with the provisions of this Law concerning data retention (Articles 128-130);

5) fails to enable or disturbs inspectors' supervision; (Articles 134 and 135).

For the offence referred to in paragraph 1 of this Article, the responsible person within a legal entity shall also be fined in the amount between 100,000 and 150,000 dinars.

For the offence in paragraph 1 of this Article, an entrepreneur and/or physical entity shall be fined in the amount between 100,000 and 150,000 dinars.

For the offence in paragraph 1 of this Article, a fine which shall be proportional to the damage done, unmet obligations, value of goods or other objects which are the subject of the offence, may be imposed in the amount of up to twenty times their value at the most.

For the offence in paragraph 1 of this Article, a protective measure banning the performance of certain activities up to three years may be imposed on a legal entity, whereas a protective measure banning the performance of certain jobs for up to one year may be imposed on the responsible person within the legal entity.

### ***Article 138***

A fine for an offence in the amount ranging from 500,000 to 2,000,000 dinars shall be imposed on a legal entity which:

1) fails to perform the activities within the electronic communications sector in accordance with relevant general requirements prescribed by the Agency (Article 37);

2) fails to notify the Agency on the commencement, change or termination of activities (Article 38, paragraph 1);

3) fails to perform electronic communications activities through a separate legal entity or branch office;

4) fails to perform the activity in accordance with the adopted technical regulations referred to in Article 44 of this Law;

5) fails to act in accordance with the Agency's decision regulating the terms and conditions of shared use (Article 51, paragraph 3);

6) fails to act in accordance with the Agency's decision regulating the terms and conditions of interconnection and/or access (Article 53, paragraph 6);

7) fails to act in accordance with the Agency's decision regulating the obligation of interconnection between the electronic communications network for special purposes and the public communications network (Article 54);

8) fails to provide services which fall within the universal service obligation (Article 56, paragraph 1);

9) fails to act in accordance with the Agency's decision pertaining to the availability of universal services (Article 56, paragraph 5);

10) fails to act in accordance with the Agency's decision on the designation of operators with SMP (Article 62, paragraph 2) and prescribed obligations (Articles 63-71);

11) uses numbering resources contrary to the provisions of this Law, and/or contrary to the licence granted for the use of numbers (Article 74);

12) leases the assigned numbering resources, and/or transfers the right of use of the assigned numbers without prior consent of the Agency (Article 76, paragraphs 1 and 3);

13) fails to act in accordance with the Agency's decision pertinent to the revocation of the assigned numbers (Article 77);

14) fails to act in accordance with the provisions of Article 79 of this Law concerning number portability;

15) fails to enable the origination of calls towards emergency services or fails to forward data on the identity and location of a caller to the emergency service call centre (Article 80);

16) uses radio-frequencies contrary to provisions of this Law (Article 85), and/or contrary to the granted individual licences (Article 86 and 89), temporary licences (Article 94) or the requirements pertaining to the use of radio-frequencies under the general authorisation regime (Article 96, paragraph 3);

17) transfers the right for the use of radio-frequencies contrary to the provision of Article 93, paragraph 3 of this Law;

18) fails to act in accordance with the Agency's decision on the revocation of the assigned radio-frequencies (Article 95);

19) fails to act in accordance with the Agency's decision on the obligation pertinent to media content distribution and broadcasting (Article 101);

20) fails to conclude a contract with the user or fails to regulate the compulsory elements stipulated in by contract (Article 105);

21) fails to offer information about the services provided in accordance with the provisions of Article 106 of this Law;

22) fails to notify the subscribers about the intention to unilaterally amend the contractual conditions in accordance with the provisions of Article 107 of this Law;

23) fails to provide value added services in accordance with the provisions of Article 108 of this Law;

24) fails to provide the minimum prescribed quality of certain services (Article 109);

25) fails to respond to a complaint of a subscriber within the prescribed time limit, cancels the provision of services or disconnects the terminal equipment of a subscriber contrary to the provisions of Article 113 of this Law;

26) acts contrary to the provisions of this Law pertaining to sending electronic messages for the purpose of direct advertising (Article 118);

27) fails to act in accordance with the provisions of this Law pertinent to personal data in public telephone directories (Article 120);

28) fails to act in accordance with the provisions of Article 122 of this Law concerning traffic data;

29) fails to act in accordance with the provisions of Article 123 of this Law concerning location data;

30) fails to take measures for ensuring security, integrity and continuity of operation of public communications networks and services (Article 124, paragraphs 1-2);

31) fails to warn the subscribers about the special risks pertinent to the violation of security and integrity of public communications networks and services (Article 124, paragraph 3);

32) fails to notify the Agency about significant violations of security and integrity of public communications networks and services from Article 125 of this Law;

33) fails to provide the Agency with data and information relevant to the verification of compliance of actions with the prescribed obligations, and/or if it fails to declare itself on the established irregularities within the prescribed time limit (Article 131);

34) fails to act in accordance with the inspector's resolution from Article 135 of this Law.

A fine for the offence referred to in paragraph 1 of this Article ranging from 50,000 to 150,000 dinars shall be imposed on the responsible person within a legal entity.

A fine for the offence referred to in paragraph 1 of this Article ranging from 50,000 to 150,000 dinars shall be imposed on an entrepreneur, and/or physical entity.

For the offence referred to in paragraph 1 item 10) of this Article a fine amounting up to 10% of revenues made by a legal entity, responsible person within a legal entity or entrepreneur in

the fiscal year preceding the year when the offence was made may be imposed, whereas for other offences referred to in paragraph 1 of this Article a fine proportional to the inflicted damage, unmet obligations, value of goods or other objects which are the subject of the offence, may be imposed in the amount of twenty times their value at the most.

For the offence referred to in paragraph 1 of this Article, a protective measure banning the performance of certain activities for a period of three years may be imposed on a legal entity and/or entrepreneur, and a protective measure banning the performance of certain jobs for a period of one year may be imposed on the responsible person within the legal entity.

### ***Article 139***

A fine for an offence in the amount ranging from 250,000 to 500,000 dinars shall be imposed on a legal entity, which:

- 1) fails to submit to the Agency the data and information necessary for the performance of duties that lie within its competence (Article 41);
- 2) fails to construct ducts and associated infrastructure necessary for the installation of electronic communications equipment to users' premises (paragraph 1 of Article 43);
- 3) intrudes the protected area or works in the vicinity of electronic communications networks and associated facilities in a manner that endangers the operation of electronic communications (Article 45);
- 4) intrudes the protected area along the radio corridor route (Article 46);
- 5) fails to act in accordance with the requirements prescribed for ensuring electromagnetic compatibility (Article 47);
- 6) owns an electronic communications network, associated facilities or electronic communications equipment that exceeds the prescribed level of electromagnetic field intensity (Article 48);
- 7) fails to act in accordance with the Agency's decision on the financing of universal service (Article 58, paragraph 2);
- 8) fails to act in accordance with the Agency's decision on the provision of access to application program interfaces and electronic programme guides (Article 102);
- 9) fails to act in accordance with the provisions of Article 103 of this Law pertinent to conditional access;
- 10) fails to ensure equal availability of its services to persons with disabilities, and/or fails to act in accordance with a relevant decision adopted by the Agency (Article 110);
- 11) does not keep a public telephone directory or does not enable access to data in a public telephone directory from Article 121 of this Law.

For an offence referred to in paragraph 1 of this Article, a fine in the amount ranging from 50,000 to 100,000 dinars shall be imposed on the responsible person within the legal entity.

For an offence referred to in paragraph 1 of this Article a fine in the amount ranging from 50,000 to 100,000 dinars shall be imposed on an entrepreneur and/or physical entity.

### ***Article 140***

A fine for an offence in the amount ranging from 100,000 to 250,000 shall be imposed on a legal entity, which:

- 1) fails to publish data on the services provided within the universal service offer (Article 56, paragraph 3);
- 2) fails to forward a report on the provision of universal services to the Agency (Article 57, paragraph 1);
- 3) fails to notify the Agency about the modifications of data (Article 74, paragraph 3 and

Article 91, paragraph 3);

4) fails to issue a bill with detailed specifications of provided services in accordance with the provisions of Article 112 of this Law;

5) fails to provide a subscriber with the possibility of cost control referred to in Article 114 of this Law;

6) fails to provide services of calling-line and connected line identification in accordance with the provisions of Article 115 of this Law;

7) fails to take measures in connection with the detection and prevention of malicious or nuisance calls (Article 116);

8) fails to provide a subscriber with a possibility to bar automatic call forwarding (Article 117);

9) fails to provide a subscriber with the possibility to filter unsolicited and harmful electronic messages (Article 119, paragraph 1);

10) fails to take measures related to the detection and prevention of sending unsolicited and harmful messages (Article 119, paragraphs 2-4).

For an offence referred to in paragraph 1 of this Article, a fine in the amount ranging from 25,000 to 50,000 dinars shall also be imposed on a responsible person within the legal entity.

For an offence referred to in paragraph 1 of this Article, a fine in the amount ranging from 25,000 to 50,000 dinars shall be imposed on an entrepreneur, and/or a physical entity.

## **XX. TRANSITIONAL AND FINAL PROVISIONS**

### ***Continuity of Operation of the Republic Telecommunication Agency***

#### ***Article 141***

On the day this Law enters into force, the Republic Telecommunication Agency founded by the Telecommunications Law (*Official Gazette of the Republic of Serbia*, nos. 44/03, 36/06 and 50/09 - CC decision) shall continue to operate as the Republic Agency for Electronic Communications, in accordance with the provisions of this Law.

The employees of the Republic Telecommunication Agency shall continue to work as the employees of the Republic Agency for Electronic Communications at the posts previously held in the Agency until the new general by-laws of the Agency which regulate labour rights and obligations come into force.

Members of the Managing Board of the Republic Telecommunication Agency shall continue to work until the election of members of the Managing Board of the Republic Agency for Electronic Communications, in accordance with the provisions of this Law.

### ***Special Obligations of the Ministry***

#### ***Article 142***

The Ministry shall announce a public call for the election of members of the Managing Board of the Agency whose term of office has expired within 30 days from the day this Law enters into force.

The Ministry shall adopt general by-laws on the basis of the competencies resulting from this Law within a year from its coming into force.

Until the by-laws from paragraph 2 of this Article are adopted, the valid general by-laws, which were adopted in accordance with the law which shall cease to be valid on the day this Law enters into force, shall be implemented, with the exception of the provisions of such by-laws which are contrary to this Law.

***Special Obligations of the Agency***

***Article 143***

The Managing Board of the Agency shall adopt the Statute of the Agency which shall be in accordance with this Law within 30 days from the day this Law enters into force.

The Managing Board of the Agency shall announce a public call for the election of the Director of the Agency within 30 days from the day the Statute of the Agency enters into force.

The Director of the Agency shall adopt a by-law on the internal organisation of the Agency within 30 days from assuming the office.

The Agency shall establish new registers, records and databases, or update the previous ones, and shall prescribe the forms for data entry and change, in accordance with the provisions of this Law, within 30 days from the day this Law enters into force.

The Agency shall adopt general by-laws on the basis of authorisations stipulated under the Law within a year from the day of its entry into force.

Until the by-laws from paragraph 4 of this Article are adopted, the valid general by-laws, which were adopted in accordance with the law that shall cease to be valid on the day this Law enters into force, shall be implemented with the exception of the provisions of such by-laws that are contrary to this Law.

***Licences and General Authorizations Issued Pursuant to Formerly Valid Regulations***

***Article 144***

Licences and general authorizations granted until the day this Law enters into force shall be valid until the expiry of the period they were granted for.

Holders of licences and general authorizations from paragraph 1 of this Article shall bring their business operation into compliance with the provisions of this Law within six months from the day this Law enters into force.

The Agency shall, in the line of duty, record all licence and authorizations holders from paragraph 1 of this Article in the register of operators, within 30 days from the day this Law enters into force.

***Markets Susceptible to Ex-ante Regulation and Decisions on the Designation of Operators with Significant Market Power Made According to Formerly Valid Regulations***

***Article 145***

Until the adoption of the decision referred to in Article 59 of this Law, it shall be deemed that the following markets shall be susceptible to *ex ante* regulation:

- 1) retail access to the public telephone network;
- 2) wholesale call origination on public telephone network;
- 3) wholesale call termination on public telephone networks;
- 4) wholesale (physical) access to network elements and associated facilities (including shared and fully unbundled local loop access);
- 5) wholesale broadband access;
- 6) wholesale leased lines;
- 7) wholesale call termination on mobile telephone networks.

The Agency shall conduct the market analysis in accordance with the provisions of this Law within a year from the day this Law enters into force.

Within six months from the day of the publication of the market analysis report from

paragraph 2 of this Article, the Agency shall review the decisions on the designation of operators with significant market power adopted in accordance with the previously valid regulations, and decide on the designation of operators with SMP in accordance with the provisions of this Law.

### ***Decisions on the Assigned Numbering Resources***

#### ***Article 146***

Decisions on the assigned numbering resources adopted until the day this Law enters into force shall be valid until the expiry of the period they were adopted for, and the assigned numbering resources shall be used in accordance with the provisions of this Law.

### ***Licences for Radio-stations Granted According to Formerly Valid Regulations***

#### ***Article 147***

On the day this Law enters into force, the holders of licences for radio stations shall continue working according to the granted licences until the expiry of the period they were granted for.

Notwithstanding the provision referred to in paragraph 1 of this Article, the holders of licences for broadcasting stations granted as part of licences for the provision of television programme broadcasting service, shall continue working in accordance with the granted licences, which shall cease to be valid after the time limits stipulated in the by-law on the switchover from analogue to digital television programme broadcasting from paragraph 1 of Article 104 of this Law.

### ***Instituted Proceedings***

#### ***Article 148***

The proceedings instituted until the entry of this Law into force shall be completed in accordance with the regulations they have been instituted upon.

### ***The Provision of Publicly Available Telephone Services via Public Fixed Telephone Network***

#### ***Article 149***

The provision of publicly available telephone services via public fixed telephone network shall be exempted from the general authorisation regime until December 31, 2011.

Until the expiry of the time limit from paragraph 1 of this Article, the licence for public fixed telecommunications network and services shall be granted in accordance with the provisions of the Telecommunications Law.

### ***Repeal of the Telecommunications Law***

#### ***Article 150***

The Telecommunications Law shall cease to be valid with the entry into force of this Law, with the exception of item 4) of paragraph 1 of Article 6, Articles 36, 37 and 39, which shall cease to be valid on December 31, 2011.

The Law on Communications System (*Official Herald of SFRY*, nos. 41/88, 80/89 and 29/90, and *Official Herald of FRY*, nos. 34/92, 29/94 and 28/96) shall cease to be valid on the date this Law enters into force.

### ***Entry into Force***

#### ***Article 151***

This Law shall come into force on the eighth day from the date of its publication in the *Official Gazette of the Republic of Serbia*.