[LU] Transposition of Directives on the Common Regulatory Framework for Electronic Networks and Services now Complete

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Under Luxembourg law, the transposition of the European legislative framework for electronic networks and services was initially provided for by the 2005 “Telecom Package”, which comprised four separate acts. The amendments arising from Directives 2009/136/EC and 2009/140/EC have made it necessary to adopt a number of acts amending the initial “package” and to replace several of its component parts. The latest change was made recently by the Act of 28 July 2011 (see also: IRIS 2012-2/33). The other alterations to be made were in fact adopted before the deadline for incorporation into national legislation in May 2011.

The first amending act dates back to 2010 (Act of 26 July 2010 amending the 2005 Act on 1): organisation of the national independent regulatory authority (Institut Luxembourgeois de Régulation - ILR); 2) amendment to the amended Act of 22 June 1963 laying down the scheme for civil servants’ salaries) and basically reorganises the ILR. The independence of the national regulatory authorities, as provided for in Article 3 of amended Directive 2002/21/EC, will henceforth be guaranteed under Luxembourg law by special protection granted to their heads.

The transposition of the Directives was completed by the adoption of two Acts on 27 February 2011, one amending the Act of 30 May 2005 on organisation of the management of radio waves (“Act 2011/1”), and one on electronic communication networks and services (“Act 2011/2”).

With a view to adapting the law to the requirements of Directive 2009/140/EC, Act 2011/1 proposes dropping the general ban on the transfer of licences (point 1 of Article 2 of Act 2011/1). Similarly, the new Article 7 (1) a) of the 2005 Act amended by Act 2011/1 adds to the obligations that may be associated with the licences that of supplying a service or using a type of technology for which the rights to use the frequency has been granted, including demands in terms of coverage and quality.

Regarding Act 2011/2, complaints had been made that Luxembourg had not transposed Article 11 (2) of Directive 2002/21/EC, which prescribes an effective structural separation in the management of the networks and the authorities issuing the official permits. Since the 2005 Act did not make any provision for

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such a structural separation, it has been replaced by Act 2011/2, which henceforth provides for this in its Article 38(5). The other major change made is the extension of the definitions of access to the local loop (Article 2 of Act 2011/2). This extension is important because it covers every aspect of requirements for deploying fixed and radio networks. The earlier arrangements were scarcely suited to the deployment of new infrastructures and hence to inter-network competition. Similarly, Article 45 of Act 2011/2 introduces the principle of the security and integrity of networks and services, signifying the adoption of adequate measures for managing the risk in terms of security and to guarantee the integrity and the continuity of the services provided. Lastly, Article 34 of Act 2011/2 transposes Article 13bis of Directive 2002/19/EC on the functional separation of operators' networks and service activities.

These changes, more particularly the replacement of the 2005 Act on electronic communications networks and services by a new updated Act (Act 2011/2) that incorporates a large part of the 2005 Act, constitute the final stage in a total, faithful transposition of the Directives, apart from issues involving the protection of data and privacy that were only transposed by an Act adopted in July 2011.

Law of 26 July 2010 amending the Law of 2005 on 1) the organisation of the Luxembourg Institute of Regulation; 2) concerning amendment of the amended Law of 22 June 1963 laying down the system on salaries of State employees, gazetted in Mémorial A, no. 132, of 12 August 2010 (p. 2184)

Law of 27 February 2011 on electronic communications services and networks, gazetted in Mémorial A, no. 43 of 8 March 2011 (p. 610)

Law of 27 February 2011 amending the Law of 30 May 2005 on the organisation of the management of radio waves, gazetted in Mémorial A, no. 43 of 8 March 2011 (p. 630)

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