



STATUTORY INSTRUMENTS.

S.I. No. 373 of 2007

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (ACCESS)(AMENDMENT)
REGULATIONS 2007

(Prn. A7/1202)

EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (ACCESS)(AMENDMENT)
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I, EAMON RYAN, Minister for Communications, Marine and Natural Resources, in exercise of the powers conferred on me by section 46A of the Communications Regulation Act 2002 (No. 20 of 2002) (as inserted by section 14 of the Communications Regulation (Amendment) Act 2007 (No. 22 of 2007)) and for the purpose of amending regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) giving effect to Directive 2002/19/EC¹ of the European Parliament and of the Council of 7 March 2002, hereby make the following Regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the European Communities (Electronic Communications Networks and Services)(Access)(Amendment) Regulations 2007.

(2) These Regulations come into operation on 29th June 2007.

“Principal Regulations” defined.

2. In these Regulations, “Principal Regulations” means the European Communities (Electronic Communications Networks and Services)(Access) Regulations 2003 (S.I. No. 305 of 2003).

Amendment of Regulation 5 of Principal Regulations (Rights and obligations for interconnection and access).

3. Regulation 5 of the Principal Regulations is amended as follows:

(a) in paragraph (2), by substituting “shall” for “has an obligation to”;

(b) by substituting the following paragraphs for paragraphs (5) and (6):

“(5) If an operator to which paragraph (4) relates receives and redistributes wide-screen television services or programmes, the operator—

(a) shall not alter a signal that it receives in wide-screen format, and

(b) shall ensure that the signal is redistributed in the same format.

¹O.J. L 108, 24.4.2002, p. 7

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 6th July, 2007.*

(6) Without limiting Regulation 18 of the Authorisation Regulations, an undertaking that acquires information from another undertaking before, during or after the process of negotiating access or interconnection arrangements shall not use that information for a purpose other than that for which it was supplied.”;

(c) by substituting the following paragraphs for paragraph (8):

“(8) An operator that—

- (a) fails to comply with paragraph (2), (3), (4) or (5)(b), or
- (b) contravenes paragraph (5)(a), (6) or (7),

commits an offence.

(9) An offence under paragraph (8) is triable summarily.

(10) In proceedings for an offence involving a failure to comply with a paragraph referred to in paragraph (8)(a), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant paragraph, or
- (b) it was not possible for that paragraph to be complied with.

(11) An offence involving a contravention of a paragraph referred to in paragraph (8)(b) is one of strict liability.

(12) An operator found guilty of an offence under paragraph (8) is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 7 of Principal Regulations (Conditional Access systems and other facilities).

4. Regulation 7 of the Principal Regulations is amended as follows:

(a) in paragraph (7), by inserting “or 47G” after “section 34”;

(b) by inserting the following paragraphs after paragraph (10):

“(11) An operator of a system referred to in paragraph (1) that fails to comply with that paragraph commits an offence.

(12) An operator of conditional access services that fails to comply with paragraph (2) commits an offence.

(13) A holder of industrial property rights to conditional access products and systems who—

- (a) fails to comply with paragraph (3), or

(b) contravenes paragraph (4),

commits an offence.

(14) An offence under this Regulation is one of strict liability and is triable summarily.

(15) A person found guilty of an offence under this Regulation is liable on conviction to a fine not exceeding €5,000.”.

Amendment of Regulation 10 of Principal Regulations (Transparency).

5. Regulation 10 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (5):

“(6) An operator of conditional access services that fails to comply with—

(a) an obligation imposed under paragraph (1), or

(b) a requirement imposed under paragraph (2) or (4), or

(c) a direction issued under paragraph (5),

commits an offence.

(7) An offence under paragraph (6) is triable either summarily or on indictment.

(8) In proceedings for an offence under paragraph (6), it is a defence to establish that—

(a) reasonable steps were taken to comply with the relevant obligation, requirement or direction, or

(b) it was not possible for that obligation, requirement or direction to be complied with.

(9) An operator found guilty of an offence under paragraph (6) is liable on conviction—

(a) if the offence is tried summarily, to a fine not exceeding €5,000, or

(b) if the offence is tried on indictment and the undertaking is a body corporate, to a fine not exceeding—

(i) €5,000,000,

or

(ii) if 10 per cent of the turnover of the operator is greater than that amount, an amount equal to that percentage, or

- (c) if the offence is tried on indictment and the operator is a natural person, to a fine not exceeding €500,000.

(11) If, after being convicted of an offence under paragraph (6), an operator continues to fail to comply with the relevant obligation, requirement or direction, the operator commits a further offence on each day or part of a day during which the failure continues.

(12) An operator found guilty of an offence under paragraph (11) is liable on conviction for the offence—

- (a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or
- (b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

Amendment of Regulation 11 of Principal Regulations (Non-discrimination).

6. Regulation 11 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (2):

“(3) An operator that fails to comply with an obligation imposed under paragraph (1) commits an offence.

(4) An offence under paragraph (3) is triable either summarily or on indictment.

(5) In proceedings for an offence under paragraph (3), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant obligation, or
- (b) it was not possible for that obligation to be complied with.

(6) An operator found guilty of an offence under paragraph (3) is liable on conviction—

- (a) if the offence is tried summarily, to a fine not exceeding €5,000, or
- (b) if the offence is tried on indictment and the operator is a body corporate, to a fine not exceeding—
 - (i) €5,000,000,
 - or
 - (ii) if 10 per cent of the turnover of the operator is greater than that amount, an amount equal to that percentage, or
- (c) if the offence is tried on indictment and the operator is a natural person, to a fine not exceeding €500,000.

(7) If, after being convicted of an offence under paragraph (3), an operator continues to fail to comply with the relevant obligation, the operator commits a further offence on each day or part of a day during which the failure continues.

(8) An operator found guilty of an offence under paragraph (7) is liable on conviction for the offence—

- (a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or
- (b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

Amendment of Regulation 12 of Principal Regulations (Accounting separation).

7. Regulation 12 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (4):

“(5) An operator that fails to comply with—

- (a) an obligation imposed under paragraph (1), or
- (b) a requirement made under paragraph (2),

commits an offence.

(6) An offence under paragraph (5) is triable either summarily or on indictment.

(7) In proceedings for an offence under paragraph (5), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant obligation or requirement, or
- (b) it was not possible for that obligation or requirement to be complied with.

(8) An operator found guilty of an offence under paragraph (5) is liable on conviction—

- (a) if the offence is tried summarily, to a fine not exceeding €5,000, or
- (b) if the offence is tried on indictment and the operator is a body corporate, to a fine not exceeding—
 - (i) €5,000,000,
 - or
 - (ii) if 10 per cent of the turnover of the operator is greater than that amount, an amount equal to that percentage, or

- (c) if the offence is tried on indictment and the operator is a natural person, to a fine not exceeding €500,000.

(9) If, after being convicted of an offence under paragraph (5), an operator continues to fail to comply with the relevant obligation or requirement, the operator commits a further offence on each day or part of a day during which the failure continues.

(10) An operator found guilty of an offence under paragraph (9) is liable on conviction for the offence—

- (a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or
- (b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

Amendment of Regulation 13 of Principal Regulations (Obligations of access to and use of specific network facilities).

8. Regulation 13 of the Principal Regulations is amended as follows:

- (a) by substituting the following paragraph for paragraph (3):

“(3) The Regulator may attach to an obligation imposed under paragraph (1), or a requirement imposed under paragraph (2), conditions dealing with fairness, reasonableness and timeliness.”;

- (b) by inserting the following paragraphs after paragraph (4):

“(5) An operator that fails to comply with—

- (a) an obligation imposed under paragraph (1), or
- (b) a requirement imposed under paragraph (2), or
- (c) a condition attached to an obligation under paragraph (3),

commits an offence.

(6) An offence under paragraph (5) is triable either summarily or on indictment.

(7) In proceedings for an offence under paragraph (5), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant obligation, requirement or condition, or
- (b) it was not possible for that obligation, requirement or condition to be complied with.

(8) An operator found guilty of an offence under paragraph (5) is liable on conviction—

(a) if the offence is tried summarily, to a fine not exceeding €5,000, or

(b) if the offence is tried on indictment and the operator is a body corporate, to a fine not exceeding—

(i) €5,000,000,

or

(ii) if 10 per cent of the turnover of the operator is greater than that amount, an amount equal to that percentage, or

(c) if the offence is tried on indictment and the operator is a natural person, to a fine not exceeding €500,000.

(9) If, after being convicted of an offence under paragraph (5), an operator continues to fail to comply with the relevant obligation, requirement or condition, the operator commits a further offence on each day or part of a day during which the failure continues.

(10) An operator found guilty of an offence under paragraph (9) is liable on conviction for the offence—

(a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or

(b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

Amendment of Regulation 14 of Principal Regulations (Price control and cost accounting obligations).

9. Regulation 14 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (6):

“(7) An operator that fails to comply with

(a) an obligation imposed under paragraph (1), or

(b) a direction issued under paragraph (4),

commits an offence.

(8) An offence under paragraph (7) is triable either summarily or on indictment.

(9) In proceedings for an offence under paragraph (7), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant obligation or direction, or
- (b) it was not possible for that obligation or direction to be complied with.

(10) An operator found guilty of an offence under paragraph (7) is liable on conviction—

- (a) if the offence is tried summarily, to a fine not exceeding €5,000, or
- (b) if the offence is tried on indictment and the operator is a body corporate, to a fine not exceeding—
 - (i) €5,000,000,
 - or
 - (ii) if 10 per cent of the turnover of the operator is greater than that amount, an amount equal to that percentage, or
- (c) if the offence is tried on indictment and the operator is a natural person, to a fine not exceeding €500,000.

(11) If, after being convicted of an offence under paragraph (7), an operator continues to fail to comply with the relevant obligation or direction, the operator commits a further offence on each day or part of a day during which the failure continues.

(12) An operator found guilty of an offence under paragraph (11) is liable on conviction for the offence—

- (a) if tried summarily, to a fine not exceeding €500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000, or
- (b) if tried on indictment, to a fine not exceeding €5,000 for each day or part of a day during which the failure continues.”.

Amendment of Regulation 17 of Principal Regulations (Directions).

10. Regulation 17 of the Principal Regulations is amended as follows:

- (a) by inserting “(1)” before “The Regulator may”;
- (b) by inserting the following paragraphs at the end:

“(2) An undertaking that fails to comply with a direction issued to it in accordance with paragraph (1) commits an offence.

(3) An offence under paragraph (2) is triable summarily.

(4) In proceedings for an offence under paragraph (2), it is a defence to establish that—

- (a) reasonable steps were taken to comply with the relevant direction, or
- (b) it was not possible for that direction to be complied with.

(5) An undertaking found guilty of an offence under paragraph (2) is liable on conviction to a fine not exceeding €5,000.”.

Substitution of Regulation 20 of Principal Regulations.

11. The Principal Regulations are amended by substituting the following Regulations for Regulation 20:

“Prosecution and trial of offences, etc.

20. (1) If—

- (a) the Regulator has made an application under Regulation 18 to the High Court to secure a person’s compliance with an obligation imposed by or under these Regulations, and
- (b) a provision of these Regulations makes it an offence to fail to comply with the obligation,

the Regulator may not bring proceedings against the person for such an offence or give a notice under section 44 of the Act of 2002 for failing to comply with the obligation.

(2) An offence under these Regulations is an offence to which section 44 of the Act of 2002 applies.

Offences by bodies corporate

20A. (1) If—

- (a) an offence under these Regulations is committed by a body corporate, and
- (b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other similar officer of the body, or is a person who was purporting to act in any such capacity,

that person as well as the body corporate commits an offence and is liable to be proceeded against and punished as if that person had committed the first-mentioned offence.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and omissions of a member of that body in

connection with the member's functions of management as if the member were a director or manager of it.

(3) A person may be proceeded against for an offence under paragraph (1) whether or not the body corporate has been proceeded against or been convicted of the offence committed by the body.”.



GIVEN under my Official Seal,
28 June 2007

EAMON RYAN
Minister for Communications, Marine and Natural Resources

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These regulations amend the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 (S.I. No. 305 of 2003) by:—

- (1) creating new summary offences,
- (2) increasing the penalties for new and existing summary offences,
- (3) creating certain indictable and continuous offences and providing for the penalties that may be imposed on conviction of these offences.

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