

The new Italian Code for electronic communications: a technologically neutral solution

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THE ITALIAN REGULATORY FRAMEWORK IN THE ELECTRONIC COMMUNICATIONS SECTOR

- THE ITALIAN CODE FOR POST, POST BANKING ACTIVITIES AND TELECOMMUNICATIONS WAS ADOPTED IN 1973
- SINCE THEN, THE TWO MAJOR COMMUNITY REFORMS OF 1990 AND 1998 WERE IMPLEMENTED IN THE ITALIAN LEGISLATION, WITH "AD HOC" MEASURES
- WITH THE 1999 REVIEW "PACKAGE" THERE WAS AN EXCELLENT CHANCE TO REVISE THE WHOLE LEGISLATION FOLLOWING RATIONAL CRITERIA

THE "OLD" CODE

1. GENERAL RULES
2. POSTAL SERVICES
3. POST BANKING SERVICES
4. TELECOMMUNICATIONS SERVICES – BOTH PUBLIC AND PRIVATE - INCLUDING
 - VOICE TELEPHONY SERVICE
 - TELEGRAPHIC SERVICES
 - RADIOELECTRIC SERVICES
 - SUBMARINE CABLES

THE LAW n. 166/2002

- THE ITALIAN GOVERNMENT HAD THE MANDATE TO IMPLEMENT – BY AUGUST 2003 - DIRECTIVES 2002/19/CE, 2002/20/CE, 2002/21/CE AND 2002/22/CE, THROUGH THE ADOPTION OF A NEW ELECTRONIC COMMUNICATIONS CODE.
- THE BASIC PRINCIPLES TO BE FOLLOWED ARE:
 - MARKET ACCESS BASED ON OBJECTIVE, TRANSPARENT, NON DISCRIMINATORY AND PROPORTIONAL CRITERIA
 - EFFICIENT USAGE OF RADIO SPECTRUM, ALSO THROUGH FREQUENCY TRADING
 - DEFINITION OF TIMELY, NON DISCRIMINATORY AND TRANSPARENT PROCEDURES FOR THE INSTALLATION OF INFRASTRUCTURES
 - SIMPLIFICATION OF ADMINISTRATIVE PROCEDURES
 - INTEROPERABILITY OF DIGITAL SERVICES
 - THE RESPECT OF THE ESTABLISHED ROLE AND DUTIES OF THE NRA AND OF THE MINISTRY OF COMMUNICATIONS
 - FLEXIBLE REGULATION OF ACCESS AND INTERCONNECTION
 - SAFEGUARD OF THE UNIVERSAL SERVICE,

THE NEW CODE OF ELECTRONIC COMMUNICATIONS

- THE NEW CODE, IN SECTION I AND II, ESTABLISHES THE GENERAL PRINCIPLES OF THE REGULATORY FRAMEWORK AND THE REGULATION OF THE ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES OFFERED TO THE PUBLIC; THIS PART IMPLEMENTS THE EUROPEAN DIRECTIVES
- THE OTHER SECTIONS III, IV AND V WILL ADDRESS “PRIVATE” NETWORKS AND SERVICES, RADIOELECTRIC SERVICES AND SUBMARINE CABLES
- THE NEW CODE IS “EXHAUSTIVE” AND THE PRACTICAL APPLICATION OF ITS PROVISIONS HAS NO NEED OF FURTHER REGULATORY MEASURES
- POSTAL AND POST BANKING SERVICES ARE NOT INCLUDED IN THE NEW CODE

THE APPROVAL PROCEDURE

- IN DECEMBER 2002 THE GENERAL REGULATORY CRITERIA FOR THE NEW CODE WERE SUBMITTED TO A PUBLIC CONSULTATION PROCESS
- A HIGH LEVEL CONSULTATIVE GROUP WAS ESTABLISHED, WITH REPRESENTATIVES OF THE OPERATORS
- TAKING INTO ACCOUNT THE RESULTS OF THE CONSULTATION, THE TEXT WAS DRAFTED AND DISCUSSED WITH ALL THE INSTITUTIONAL INTERESTED PARTIES
- THE DRAFT TEXT WAS ADOPTED WITH A PRELIMINARY DECISION OF THE COUNCIL OF MINISTERS (5.23.2003)
- THE TEXT HAS BEEN EVALUATED BY THE RELEVANT PARLIAMENT COMMISSIONS AND THE “STATO/REGIONI” CONFERENCE
- THE DECREE WAS APPROVED BY THE PRESIDENT OF THE REPUBLIC, SUBSTANTIALLY RESPECTING THE EUROPEAN DEADLINE

HIGHLIGHTS OF THE NEW CODE SECTION I – GENERAL PRINCIPLES

- THE RIGHTS OF FREEDOM IN THE USE OF ELECTRONIC COMMUNICATIONS AND OF FREE ECONOMIC INITIATIVE IN A COMPETITIVE FRAMEWORK ARE FORMALLY RECOGNISED (ART. 3)
- THE GENERAL OBJECTIVES OF THE REGULATION ARE DEFINED IN ART. 4; AN IMPORTANT AND INNOVATIVE REFERENCE IS MADE TO THE PROMOTION OF COMPETITIVE BROADBAND NETWORKS AND SERVICES AND TO THE DEVELOPMENT OF CONVERGENCE AND OPEN STANDARDS, IN LINE WITH THE EUROPEAN POLICY

HIGHLIGHTS OF THE NEW CODE SECTION I – GENERAL PRINCIPLES

- THE PRINCIPLE OF COOPERATION BETWEEN THE CENTRAL GOVERNMENT, THE REGIONS AND THE LOCAL INSTITUTIONS IS STATED IN ART. 5
- THE REGIONS ARE EMPOWERED TO PROMOTE THE AVAILABILITY OF BROADBAND NETWORKS AND SERVICES IN SPECIFIC AREAS AND TO IDENTIFY INITIATIVES TO SUPPORT LOW INCOME, OLD AND DISABLED PEOPLE
- ALL INITIATIVES MUST BE BASED ON TRANSPARENCY, PROPORTIONALITY AND NON DISCRIMINATION, RESPECTING THE PRINCIPLES OF FAIR COMPETITION

HIGHLIGHTS OF THE NEW CODE SECTION I – GENERAL PRINCIPLES

- THE RESPECTIVE ROLES AND DUTIES OF THE MINISTRY AND OF THE NRA (AGCOM) ARE DEFINED IN ART. 7, QUOTING THE RELEVANT LEGISLATIVE MEASURES; THE DETAILS REGARDING THE RESPECTIVE ROLES AND DUTIES WILL BE NOTIFIED TO THE EUROPEAN COMMISSION AND ADEQUATELY PUBLISHED
- ART. 8 DEFINES THE PROCEDURE FOR COOPERATION BETWEEN THE MINISTRY, THE NRA AND THE COMPETITION AUTHORITY, WHICH WILL BE TIMELY ADOPTED AND PUBLISHED.

HIGHLIGHTS OF THE NEW CODE SECTION I – GENERAL PRINCIPLES

- AMONG THE OBJECTIVES AND PRINCIPLES OF THE REGULATION (ART. 13), IT IS IMPORTANT TO UNDERLINE THE PROMOTION OF EFFICIENT AND SUSTAINABLE INVESTMENTS IN BROADBAND NETWORKS AND SERVICES AND THE ADOPTION OF A FLEXIBLE APPROACH TO ACCESS AND INTERCONNECTION
- IN LINE WITH THE PRINCIPLE OF SIMPLIFICATION OF ADMINISTRATIVE PROCEDURES, ANY REGULATORY MEASURE SHALL BE EVALUATED FOLLOWING THE CRITERIA OF THE “IMPACT OF THE REGULATION'S COST”

HIGHLIGHTS OF THE NEW CODE SECTION I – GENERAL PRINCIPLES

- COHERENTLY WITH THE PRINCIPLE OF AN EFFICIENT MANAGEMENT OF RADIO SPECTRUM (ART. 14) FREQUENCY TRADING IS ALLOWED ON A COMMERCIAL BASIS AND SAFEGUARDING THE FAIR COMPETITION PRINCIPLE
- THE TRADING OF SPECIFIC FREQUENCIES (ASSIGNED TO A LIMITED NUMBER OF OPERATORS) IS ALLOWED BETWEEN AUTHORIZED SUBJECTS OFFERING NETWORKS AND SERVICES BASED ON THE SAME TECHNOLOGY (GSM, UMTS, WLL)

HIGHLIGHTS OF THE NEW CODE SECTION II – PUBLIC ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

- ART. 19 DEFINES THE TIMING OF THE MARKET ANALYSIS PROCEDURE, FIXING THE FIRST TEST OF THE RELEVANT MARKETS IN FOUR MONTHS TIME SINCE THE APPROVAL OF THE CODE; THE MARKET ANALYSIS IS REPLICATED FOLLOWING THE COMMISSION'S UPDATES OF THE RECCOMENDATION OR, ANYWAY, EVERY 18 MONTHS
- FOLLOWING THE APPROACH OF THE COMMISSION'S GUIDELINES AND RECCOMENDATION, THE MARKET ANALYSIS SHOULD TAKE INTO ACCOUNT THE DYNAMICS OF THE MARKET ALSO IN A FORWARD LOOKING WAY

HIGHLIGHTS OF THE NEW CODE
SECTION II – PUBLIC ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES

- THE AUTHORIZATION MECHANISM (ART. 25) IS DIRECTLY INSPIRED TO THE PRINCIPLE OF SIMPLIFICATION OF ADMINISTRATIVE PROCEDURES; FOR THE START UP OF THE ACTIVITIES A SIMPLE NOTIFICATION TO THE MINISTRY IS REQUIRED
- IN THE CASE OF REQUESTS OF INDIVIDUAL RIGHTS ON FREQUENCIES AND NUMBERS, THE TIMING STATED IN THE DIRECTIVE 2002/20/CE IS APPLIED
- THE AUTHORIZATION LASTS FOR NO MORE THAN TWENTY YEARS AND ITS TRANSFER TO ANOTHER OPERATOR IS SUBJECT TO A NOTIFICATION TO THE MINISTRY

HIGHLIGHTS OF THE NEW CODE
SECTION II – PUBLIC ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES

- THE EXISTING INDIVIDUAL LICENSES AND GENERAL AUTHORIZATIONS ARE “AUTOMATICALLY” CONVERTED IN THE AUTHORIZATION INTRODUCED BY THE NEW REGULATORY FRAMEWORK (ART. 38)
- TRIALS OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES IS REGULATED BY THE SAME SIMPLIFIED AUTHORIZATION PROCEDURE (ART. 39)

HIGHLIGHTS OF THE NEW CODE
SECTION II – PUBLIC ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES

- DUE TO THE EFFECTIVE COMPETITION ON THE MARKET OF TELEPHONE DIRECTORY ENQUIRY SERVICES, THE DESIGNATION OF AN UNDERTAKING CHARGED WITH THE RELEVANT UNIVERSAL SERVICE OBLIGATION IS NOT ENVISAGED; THE MINISTRY MONITORS THE MARKET AND, IF IT IS THE CASE, ADOPTS THE NECESSARY ADJUSTMENTS (ART. 55)
- IN LINE WITH THE CURRENT LEGISLATION, THE UNIVERSAL SERVICE NET COST IS FINANCED THROUGH A SHARING MECHANISM – UNIVERSAL SERVICE FUND (ART. 63)
- THE MINISTRY, IN LINE WITH THE EUROPEAN ORIENTATIONS AND TAKING INTO ACCOUNT THE DEVELOPMENT OF THE COMPETITIVE MARKET, CAN EVALUATE THE NEED OF DESIGNATING UNDERTAKINGS FOR SPECIFIC OBLIGATIONS (ART. 65). FOR THE FIRST TIME, THIS ACTIVITY WILL BE CONDUCTED IN THE FIRST TWELVE MONTHS SINCE THE ADOPTION OF THE CODE AND THEN EVERY TWO YEARS

HIGHLIGHTS OF THE NEW CODE
SECTION II – PUBLIC ELECTRONIC
COMMUNICATIONS NETWORKS AND SERVICES

- FOLLOWING THE PRINCIPLE EXPRESSED IN CONSIDERING 26 OF THE DIRECTIVE 2002/22/CE, THE NRA CAN IMPOSE PRICE CONTROLS ON RETAIL SERVICES WHEN THE RELEVANT WHOLESALE MEASURES OR MEASURES REGARDING CARRIER SELECTION OR PRE-SELECTION DO NOT ENSURE THE ACHIEVEMENT OF THE OBJECTIVE OF EFFECTIVE COMPETITION AND PUBLIC INTEREST

HIGHLIGHTS OF THE NEW CODE
SECTION II – PUBLIC ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES

- ARTICLES 88-93 REGULATE IN DETAIL, QUOTING THE RELEVANT NATIONAL LEGISLATION, THE CASES OF EXPROPRIATION FOR PUBLIC UTILITY, LEGAL LIMITATIONS TO OWNERSHIP, EASEMENT, INTERFERENCES WITH ELECTRIC LINES. IN PARTICULAR, WITH REFERENCE TO THE RIGHTS OF WAY, THE REGULATION IS EXTREMELY SIMPLIFIED AND PROMOTES THE DEVELOPMENT OF BOTH FIXED AND MOBILE INFRASTRUCTURES
- ADMINISTRATIVE PENALTIES ARE FIXED IN THE CASE OF INFRINGEMENT OF THE MEASURES STATED IN THE CODE (ART. 96)