

## **Act 32/2003 of 3 November (State Telecommunications Act)<sup>1</sup>**

### **PREAMBLE**

Act 11/1998 of 24 April (State Telecommunications Act) instituted a fully liberalised procedure for the delivery of services and the establishment and operation of telecommunications networks, opening the sector up to free operator competition. The legislative framework established by the Act has shown itself to be so effective as to enable the emergence of a great number of different operators in our country to provide the different services, resulting in a greater choice for users, and the appearance of an important telecommunications sector, which in turn has furnished the ideal infrastructure and conditions for fostering the development of the information society, through its convergence with the audiovisual sector and the electronic services sector around the introduction of the Internet.

The European Union is aware of the important achievements that have been made and has bent its efforts towards consolidating the harmonised framework that its Member States have attained for free competition in telecommunications. This effort has led to the approval of a new regulatory framework for electronic communications, made up of a number of Community provisions, to wit: Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services; Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services; Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services; Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities; Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector; Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services; and lastly Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community. The aforesaid directives are herein transposed. It must be noted that Directive 2002/58/EC is transposed insofar as electronic communications networks and services are concerned.

(...)

### **Article 1. Object of the Act.**

1. The object of this Act is to regulate telecommunications, which include the running of electronic communications networks and the delivery of electronic communications services and associated facilities, in accordance with article 149.1.21 of the Constitution.

2. The procedure applicable to audiovisual contents transmitted over networks and also the basic procedure for audiovisual communications media to which article 149.1.27 of the Constitution refers are excluded from the scope of this Act.

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<sup>1</sup> This text is an unofficial translation with no legal value. The only binding text is the one published in the *Boletín Oficial del Estado*, 264, on 4 November 2003.

Likewise excluded from the scope of this Act is the regulation of services that provide contents transmitted through electronic communications networks and services, activities that consist in the exercise of editorial control over the said contents, and Information Society services regulated in Act 34/2002 of 11 July on Information Society Services and Electronic Commerce that do not consist entirely or mainly of the conveyance of signals over electronic communications networks.

(...)

### CHAPTER III

## **Secrecy of communications and personal data protection and public rights and obligations linked to electronic communications networks and services**

### ***Article 33. Secrecy of communications.***

Operators who run public electronic communications networks or deliver publicly available electronic communications services must guarantee the secrecy of communications in accordance with articles 18.3 and 55.2 of the Constitution and therefore must take the necessary technical measures accordingly.

Likewise operators must take at their own cost the measures established by regulation for the performance of interceptions provided for pursuant to the terms established in article 579 of the Code of Criminal Procedure and Organic Act 2/2002 of 6 May regulating prior judicial supervision by the National Intelligence Centre.

### ***Article 34. Personal data protection.***

Without prejudice of the terms of article 4.6 and the second paragraph of the article above, likewise all other applicable specific rules, operators who run public electronic communications networks or deliver publicly available electronic communications services must guarantee that in the exercise of their activity personal data is protected pursuant to current legislation.

The operators to which the paragraph above refers must take the appropriate technical and management measures to uphold security in the operation of their network or in the delivery of their services, with the purpose of guaranteeing the levels of personal data protection that are required by the rules implementing this Act on this subject. Where there is any particular danger that the security of the public electronic communications network may be violated, the operator who runs the said network or delivers the electronic communications service shall inform subscribers of the said risk and the measures that should be taken.

### ***Article 35. Interception of electronic communications by technical services.***

1. With full respect for the right to secrecy of communications and for the Code of Criminal Procedure's requirement of judicial authorisation for the interception of contents, when equipment, infrastructures and technical facilities need to be used to intercept signals not intended for the general public for the performance of supervision work done towards the effective use of public airwaves, the following shall be applicable:

a) The telecommunications administration must design and establish its technical systems for signal interception such as to reduce to a minimum the risk of affecting communications contents.

b) When a record of contents is left as a consequence of technical interception, the medium recording the contents may not be stored or disseminated and shall be destroyed immediately.

2. The same rules shall be applied for supervising the proper use of electronic communications networks and the correct delivery of electronic communications services.

3. The terms established in this article shall be held to be without prejudice of the faculties attributed to the administration in article 43.2.

**Article 36. Encryption in electronic communications networks and services.**

1. Any sort of information that is transmitted over electronic communications networks may be protected by means of encryption procedures.

2. Encryption is an information security mechanism. As one of the conditions for its use, when encryption is used to keep information confidential, there may be an obligation to facilitate the algorithms or other encryption procedure to an authority of the General State Administration or to a public organisation, likewise the obligation to facilitate the encryption apparatuses at no cost for the purpose of examination under current rules.

**Article 37. Electronic communications networks inside buildings.**

1. Legal standards on the subject of common electronic communications infrastructures shall be implemented in the form of a royal decree. The said regulation shall determine both the point where the indoor network interconnects with public networks and the conditions applicable to the indoor network itself. In all aspects not provided for by provisions on the subject that hold the rank of law, the regulation shall furthermore regulate the guarantees applicable to accessing electronic communications services through individual systems where there is no common electronic communications infrastructure and the procedure for installing electronic communications networks in existing or future buildings.

2. The basic technical building standards that regulate the civil works infrastructure inside buildings must take into consideration the support needs of electronic communications systems and networks set in accordance with the standards referred to in the subparagraph above, calling for the civil works infrastructure to have sufficient capacity to allow the passage of the networks belonging to the different operators, such as to facilitate the possibility of shared infrastructure use by the said different operators.

**Article 38. Rights of consumers and end users.**

1. Operators who run electronic communications networks or deliver electronic communications services and individual consumers and other end users may submit their controversies to a hearing by consumer arbitration boards, in accordance with current consumer and user protection legislation.

Where such controversies are not submitted to consumer arbitration boards or consumer arbitration boards prove not to be competent to settle the conflict, the Ministry of Science and Technology shall establish by regulation a procedure whereby end users may submit the said controversies to the Ministry. In any case, any procedures that are adopted must be speedy and free of charge and shall set a deadline

for notification of the express decision, after which deadline the complaint shall be understood to have been dismissed by administrative silence. The decision handed down may be challenged in a suit under administrative law.

2. The basic rules on the use of publicly available electronic communications services that shall determine the rights of individual consumers and other end users shall be approved by means of a royal decree that shall regulate, inter alia:

- a) Liability for any damages to individual consumers and other end users.
- b) The rights of individual consumers and end users to obtain true, effective, sufficient, transparent, updated information.
- c) The deadlines for changing offers.
- d) Rights to be disconnected from certain services at the user's request.
- e) The right to obtain compensation for interrupted service.
- f) The right of individual consumers and end users to enter into contracts with operators who facilitate connection or access to the public telephone network, likewise the minimum terms of such contracts.
- g) The cases in which contracts may be demanded between individual consumers or other end users and providers of electronic communications services who are not the operators who facilitate the connection or access to the public telephone network, and the minimum terms of such contracts.
- h) The right to cancel the contract early without any penalty in cases of proposals to amend the contract conditions for valid reasons specified in the contract and without prejudice to other causes of unilateral cancellation.
- i) Cases where the Ministry of Science and Technology approves standard contracts between individual consumers or other sorts of end users and operators who run electronic communications networks or deliver electronic communications services with public service obligations or with significant power in the corresponding specific reference markets.
- j) The right to receive comparable, pertinent, updated information about the quality of publicly available electronic communications services.
- k) The right to choose a means of paying for the corresponding service from among the means of payment common in business practice.

In the aforesaid regulation, the application of the system of consumer and end user protection may be extended to other user categories.

3. Subscribers to electronic communications services shall particularly have the following rights:

- a) To have their traffic data made anonymous or erased when that data is no longer necessary for purposes of transmitting a communication. Traffic data necessary for purposes of subscriber billing and interconnection payments may be preserved only until expiration of the deadline for challenging the bill for the service or for demanding payment.
- b) To have their traffic data used for commercial purposes or for the rendering of added value services only when they have given their informed consent.

c) To receive non-itemised bills at their request.

d) For their non-traffic location data to be processed only when the said data has been made anonymous or when the subscriber has given his informed consent, and only to the extent and for the time necessary for value added services, if any, to be delivered; the subscriber must be unmistakably aware of what data are going to be processed, the purpose and duration of the processing and the value added service that is going to be delivered.

e) To stop automatic call forwarding to their terminal by a third person.

f) To prevent, by a simple means that is free of charge, the presentation of the identification of the subscriber's line in the calls the subscriber makes or the presentation of the identification of the subscriber's line to users who call the subscriber.

g) To prevent, by a simple means that is free of charge, the presentation of the identification of the calling line in incoming calls and to reject incoming calls whose line is not identified.

h) Not to receive automatic calls made without human intervention or calls from facsimile machines for the purposes of direct marketing without the subscriber's having given his prior informed consent.

4. Users of electronic communications services who are not subscribers shall likewise hold the rights recognised in subparagraphs a), b), d) and the first indent of subparagraph f) of the article above.

5. End users may not exercise the rights recognised in subparagraphs d) and f) of paragraph 3 in the case of calls made to entities that deal with emergency calls as determined by regulation, especially calls to 112 numbers.

Likewise, for a limited time, end users may not exercise the right recognised in paragraph 3.f) when the subscriber to the called line has requested the tracing of malicious or nuisance calls to his line.

The terms of paragraph 3.a) shall be held to be without detriment to the terms of article 12 of Act 34/2002 of 11 July on Information Society Services and Electronic Commerce.

6. The preparation and marketing of subscriber directories to electronic communications services and the provision of directory information services shall be done under conditions of free competition. At all events subscribers shall be guaranteed the right to protect their personal data, including the right not to appear in the said directories. To that end, the businesses that assign subscriber telephone numbers must accept all reasonable requests for information pertinent to the delivery of information services concerning subscriber numbers and directories available to the public, in an approved format and under fair, objective, cost-oriented, non-discriminatory conditions. The provision of the aforesaid information and its subsequent use are subject to the data protection rules in force at that time.

7. The Ministry of Science and Technology may introduce clauses amending contracts made between operators and individual consumers and end users to avoid the abusive treatment of individual consumers and end users.

8. The terms of this article shall be held to be without prejudice of the application of Act 26/1984 of 19 July (State Act for Consumer and User Defence).

**Article 53. Very serious infractions.**

The following shall be considered very serious infractions:

(...)

z) The serious or repeated violation of the rights provided for in article 38.3, save for the right provided for in 38.3.h), whose violation shall be governed by the sanctioning procedure provided for in Act 34/2002 of 11 July on Information Society Services and Electronic Commerce.

**Article 54. Serious infractions.**

The following shall be considered serious infractions:

(...)

r) The violation of the rights provided for in article 38.3, save where the violation must be recognised as a very serious infraction. There shall be an exception for the right in 38.3.h), whose infraction shall be governed by the sanctioning procedure provided for in Act 34/2002 of 11 July on Information Society Services and Electronic Commerce.

**Article 58. Sanctioning powers.**

The power to place sanctions shall belong to:

(...)

b) The Agencia de Protección de Datos (Data Protection Agency) in the case of very serious infractions included in article 53.z) and serious infractions provided for in article 54.r).