

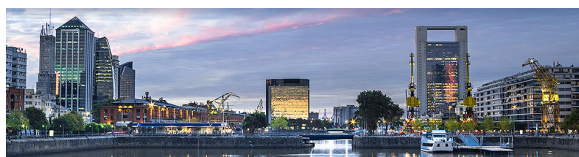
TELECOMMUNICATIONS LAWS OF THE WORLD

Argentina vs Germany



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ARGENTINA



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OVERVIEW OF LEGAL LANDSCAPE

Argentina is the third-largest economy in Latin America. Although it benefits from a wealth of natural resources, a diversified industrial base and a highly skilled labor force, statist and interventionist policies expose the economy to persistent boom-bust cycles. It is the fourth most populated country in Latin America and one of the countries with the highest penetration of mobile services.

The Government Body in charge of the control of the telecom and media industry is the National Entity of Communications (“**ENACOM**”), an autonomous and decentralized entity. It is in charge of the application of the Digital Argentina Law 27,078, Audio-visual Services Law 26,522, and related regulations.

Also, the Undersecretary of Telecommunications and Connectivity is in charge of the dictation of regulation about telecommunications.

Both entities are on the Federal Government. States and localities have no authority for regulation of the services, they only request a permit for the installation of telecommunications infrastructure.

The main regulations applicable to the ICT sector are:

- Digital Argentina Law 27,078,
- Audio-visual Services Law 26,522,
- Decree 764/2000 (Spectrum),
- Decree 690/2020 (Price Regulation),
- Decree 588/2008 (Universal Service),
- Resolution 286/2018 (Interconnection),
- Resolution 697/2018 (Licenses),
- Consumer Protection Law 24,240.

GERMANY



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OVERVIEW OF LEGAL LANDSCAPE

In Germany, the telecommunications sector is regulated mainly at the federal level in the German Telecommunications Act (*Telekommunikationsgesetz – TKG*). The regulator is the Federal Network Agency (*Bundesnetzagentur – BNetzA*).

This German telecommunications regulation is based on the European Electronic Communications Code (Directive (EU) 2018/1972 – EEEEC) that entered into force on 21 December 2020. The updated TKG transposing the EEEEC entered into force on 1 December 2021.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Licensing Regulation rules licenses, resale services, serving areas, obligations of the licensee to other licensees, to customers, and to the Regulator. The regulations set a Single License System that allows the licensee to provide any kind of telecommunication services (fixed or mobile, wired or wireless, national or international). Licenses are granted without a term limit, on demand, with a national scope, and with freedom of choice on technology and investments.

Spectrum regulation establishes that the spectrum is a public domain property, and it is granted on a precarious basis. The bandwidth to be granted must be related with the services to be provided. The bands are granted on demand or by a public auction.

The pricing regulation of telecommunications services had established “fair and reasonable” prices, which meant unregulated prices, until the Decree 690/20 was enacted. This Decree states that the prices will be reasonable, fair, must cover the operation expenses, assure a reasonable profit margin, and that they will be “regulated” by the Authority.

This Decree, enacted in August 2020, prohibited raising prices until December 2020, and subsequent resolutions of the Authority allowed higher prices since that date. But these resolutions and the Decree were challenged in the courts, and a lot of companies (Telecom, Telefónica, Directv, Telecentro, TV Cable Color, etc.) received precautionary measures in their favor, halting the price regulation and consequently allowing price freedom again.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The telecommunications sector is mainly regulated by the following laws in Germany:

- TKG: Telecommunications Act (*Telekommunikationsgesetz*)
- TTDSG: Act on Data Protection and the Protection of Privacy in Telecommunications and Telemedia (*Gesetz zur Regelung des Datenschutzes und des Schutzes der Privatsphäre in der Telekommunikation und bei Telemedien – Telekommunikations-Telemedien-Datenschutz-Gesetz*)
- FuAG: Radio Equipment Act (*Funkanlagengesetz*)
- BSIG: Act on the Federal Office for Information Security (*Gesetz über das Bundesamt für Sicherheit in der Informationstechnik = BSI-Gesetz*) as amended by the Second Act increasing the security of information technology Systems, also called IT Security Act 2.0 (*IT-Sicherheitsgesetz 2.0 = IT-SiG 2.0*).

A number of regulations have been issued to regulate more details. These include (among others):

- TKÜV: Telecommunications Surveillance Regulation (*Telekommunikations-Überwachungsverordnung*)
- TNV: Telecommunications Numbering Regulation (*Telekommunikationsnummerierungsverordnung*)
- FSBeitrV: Frequency Protection Contribution Regulation (*Frequenzschutzbeitragsverordnung*)
- TKTransparenzV: Telecommunications Transparency Regulation (*Telekommunikations-Transparenzverordnung*)
- NotrufV: Emergency Call Regulation (*Notrufverordnung*)
- 26. BImSchV: 26. Ordinance on the Implementation of the Federal Immission Control Act (*Ordinance on Electromagnetic Fields*)
- BEMFV: Ordinance on the Verification Procedure for the Limitation of Electromagnetic Fields (*Ordinance on Electromagnetic Fields*)

REGULATORY BODIES OR AUTHORITIES

ENACOM

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Undersecretary of Telecommunications and Connectivity

Roque Sáenz Peña 788. ZIP C1067AAC.

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TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Any natural or legal person providing any ICT service (such as Fixed or Mobile Telephone, Internet Access - fixed, mobile, satellite etc.) or media services (cable or wireless TV, radio), is subject to ENACOM regulations.

On the other hand, services provided through Internet only (WhatsApp, Skype, Zoom, Netflix, etc.) are not subject to these regulations.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

REGULATORY BODIES OR AUTHORITIES

The German regulator for the telecommunications sector is the Federal Network Agency (Bundesnetzagentur – BNetzA).

Official full name: Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway)

Address: Tulpenfeld 4, 53113 Bonn, Germany

Telephone: +49 228 14-0

Website: www.bundesnetzagentur.de/EN

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The regulation mainly applies to telecommunications networks, telecommunications services as well as to telecommunications equipment and associated facilities.

The main requirements of the TKG are directed at operators of telecommunications networks and providers of telecommunications services. But there are also additional requirements for persons participating in the provision of telecommunications services.

The main requirements of the FuAG are directed at manufacturers of radio equipment and authorized representatives but also to importers and distributors.

Generally, the regulation applies to networks/equipment operated in Germany and services provided in Germany. It does generally not matter where the operator/provider is established or is located.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Single Licenses are granted by the ENACOM. ENACOM does not have the authority to deny a license if the application meets all the requirements. Once the License is acquired, the licensee can request a Registration of Services, by which they are able to provide the registered services. To register services, no technical, legal, or economic support documents must be filed, only a simple petition.

Once the license and registration are granted by ENACOM, the licensee is required to provide the registered services within 24 months from the date of registration, permit the interconnection of its networks to any provider that requests the interconnection as established by the National Interconnection Rule; and provide information about traffic, total revenues and other information related to the geographical coverage area, to ENACOM.

Single Licenses are granted to both domestic and foreign companies (branches of foreign companies that are registered to conduct business in Argentina). There are no restrictions on foreign participation in the capital of the licensee. A completely foreign-owned company, if locally registered or a branch of a foreign company, can qualify for a license and a spectrum permit.

The Single License can be obtained upon filing the following information with ENACOM:

- Full legal name, Articles of Incorporation, Bylaws, Minutes of designation of valid authorities duly registered with the corresponding registries;
- Principal place of business and address in which legal notices shall be deemed duly given by ENACOM;
- An affidavit indicating that the applicant and its shareholders are not subject to any incompatibility;
- An affidavit assuring the compliance with the standards and technical specifications regarding telecommunications equipment and devices.

To hold a spectrum permit, the process depends on whether the spectrum authorization is granted by auction or by direct award. Radio spectrum can be assigned to service providers through public auctions, bidding processes (when there is a shortage of band frequencies), or upon demand. When a request to use a frequency band is filed with the ENACOM, it shall publish the frequency band requested in the Official Gazette,

The operation of telecommunications networks and/or the provision of telecommunications services does generally not require a licence in Germany.

There is a notification requirement for anyone who commercially operates public telecommunications networks or commercially provides publicly available telecommunications services that are not number-independent interpersonal telecommunications services (Sec. 5 TKG). The notification needs to be filed by completing BNetzA's official notification form without undue delay.

In addition, the use of German frequencies requires a frequency allocation (Sec. 91 TKG). Depending on the frequencies to be used, this can be a general allocation (for everyone) or an individual allocation (just for the specific person/entity that applied for the specific frequency use).

Radio equipment generally needs a European conformity assessment (Sec. 18 FuAG). And high-frequency installations with an equivalent isotropic radiated power (EIRP) of 10 watts or more may only be operated if the installation has received a site certification (*Standortbescheinigung*, Sec. 4 BEMFV).

establishing a period of 15 days for third parties to have the opportunity to give evidence of their interest of said frequency band. If there are more interested parties registered than bands of frequencies available for authorization or if a shortage of frequencies is foreseen, the authorization for the use of a frequency band will be made through public auctions. If there are no third parties interested in a particular frequency band other than the one that has filed a request or if there is no shortage of frequencies foreseen, authorizations will be granted on demand.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

A licensee must be incorporated in Argentina or have a registered branch office in Argentina.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Interconnection Rules provides licensees with a right to interconnect. Licensees must seek to negotiate, in good faith, requests for interconnection at any technically feasible point. Any party may refer a dispute regarding interconnection or access to ENACOM for resolution if no agreement is reached. Licensees with Significant Market Power must publish a Reference Offer.

There are many mandatory matters to be addressed in the interconnection agreement such as: tariffs and invoicing systems, technical and operational matters, etc.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

The German telecommunications regulation does not require operators of telecommunications networks or providers of telecommunications services to be domiciled in Germany or even in the EU.

However, some provisions require a contact person based in the EU (Sec. 166 (1) No. 2 TKG) or a general receiving agent in Germany (e.g., Sec. 62 (1) No. 3, (2) No. 3 c), Sec. 118 (1) No. 2 and Sec. 170 (1) No. 3 b) TKG). And there are provisions that require some of the regulatory duties to be carried out in Germany (e.g., to store traffic data in Germany, Sec. 176 (1) TKG, or to operate the technical facilities for controlling lawful interception functionalities in Germany, Sec. 14 (1) TKÜV).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Operators of public telecommunications networks are required, upon request, to negotiate with other companies an offer of access and interconnection to ensure users' communication, the provision of telecommunications services and their interoperability throughout the European Union (Sec. 20 (1) TKG).

BNetzA is authorized to impose obligations on companies that control access to end-users to the extent necessary to ensure end-to-end connectivity or to ensure interoperability. In particular, it may require them to interconnect their telecommunications networks with those of other companies (Sec. 21 (1) TKG).

Domestic inter-carrier roaming is not mandatory and is regulated through commercial agreements reached between the relevant carriers.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Consumer regulations states that licensees must provide to the consumer all the information related to the service, in Spanish, in a clear, detailed, free of cost manner. On the website and in the stores, it must be informed:

- The consumer's rights recognized by this Rule,
- The standard contract filed to the ENACOM,
- The address and free phone number of Customer Service of both the company and the Regulator, and the procedure to file claims,
- Details and prices of the services,
- Covered areas,
- Terms for the reception of messages with ads,
- Procedure to unsubscribe from content services (must be the same as the procedure to subscribe),
- Policies about recycling and final disposition of electronic waste, of electronics used for the service.

Besides, the licensee must publish information about the speed, quality of the link, type of services, on a site that must be linked to the main site of the company. For each type of service, the licensee must inform commercial characteristics of the service, speed, downloads limits, oversubscription rate, technical standards of quality service, resetting operation time, quality and availability of links, and network management measures.

Under certain conditions, BNetzA may also require providers of number-independent interpersonal telecommunications services to make their services interoperable (Sec. 21 (2) TKG).

Furthermore, BNetzA is authorized to require telecommunications network operators with significant market power to create certain necessary prerequisites for the interoperability of end-user services or for roaming in mobile networks, to enable the interconnection of public telecommunications networks or to provide open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or for services for virtual telecommunications networks (Sec. 26 (3) No. 4, No. 7 and No. 8 TKG).

The EU roaming regulation (Regulation (EU) 2022/612) directly applies in Germany.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG contains numerous provisions related to end-user protection that are implemented from the European Electronic Communications Code. Most of these requirements may not be excluded, at least not for companies that are neither classified as microenterprises nor as non-profit enterprises or organizations (Sec. 71 TKG). The relevant provisions do not exclusively refer to the term "end-user" but also to "consumers", "customers" or "end-customers" or "subscribers".

"User" means any natural or legal person using or requesting a publicly available telecommunication service for private or business purposes (Sec. 3 No. 41 TKG).

"End-user" is defined as a user that does not operate a public telecommunications network or provide publicly available telecommunications services (Sec. 3 No. 13 TKG).

"Consumer" is defined as any natural person who enters into a legal transaction for purposes that can predominantly be attributed neither to his commercial nor to his independent professional activity (Sec. 13 of the German Civil Code).

Specific obligations relating to end-user protection include (among other requirements):

- Non-discrimination (Sec. 51 TKG),
- Transparency requirements regarding the terms and conditions (Sec. 52 (1) TKG),
- Detailed requirements for contracts (Sec. 54 to 57 TKG),
- Requirements for the timely elimination of and compensation for disruptions (Sec. 58 TKG),
- Number portability (Sec. 59 TKG),
- Billing requirements (Sec. 63 to 65 TKG).

REGULATORY TAXES AND FEES

The cost of the License is USD 100. There is no cost for the registration of specific services.

Telecom services providers must pay:

- the Control, Inspection, and Verification fee: 0.50% of the total income accrued for the provision of services, net of taxes, and charges.
- the contribution to the Universal Service Trust Fund: 1% of the total income accrued for the provision of services, net of the taxes and charges.
- payment for the use of the radio spectrum.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

ENACOM can impose fines for breaking the federal regulations and consumer regulations.

Both federal and local Consumer Protection offices can impose fines for breaking Consumer Protection laws.

Fines, closure, confiscation of the products, can be imposed by Consumer Protection Offices.

REGULATORY TAXES AND FEES

The TKG regulates various fees (Part 12 of the TKG). Generally speaking, measures taken by BNetzA are associated with costs, including (but not limited to) the following:

- Frequency allocations and frequency usage (Sec. 223, 224 TKG),
- Number allocations (Sec. 223 (3) TKG),
- Preliminary proceedings at BNetzA (Sec. 226 TKG).

There might also be a fee for providers of universal services (voice communications, broadband internet access) to compensate the designated universal service provider if BNetzA appoints one (Sec. 163 TKG).

The TKG does not include telecommunications-specific tax requirements, but the general tax regulation also applies to telecommunications services (e.g., related to VAT).

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

BNetzA may issue orders to comply with the regulatory requirements. In cases of serious or repeated violations, BNetzA may even issue orders to prohibit the activity as an operator of telecommunications networks or provider of telecommunications services in Germany (Sec. 202 (3) TKG).

ENACOM can impose fines, closure, administrative precautionary measures about ceasing to operate, and in the most serious cases, the penalty could be the termination of the Register.

Non-compliance with the telecommunications regulatory requirements are administrative offences that can lead to administrative fines of up to 2 % of the yearly turnover of the company in some of the cases (Sec. 228 TKG). Some violations are even criminal offences that can lead to criminal fines or even imprisonment (e.g., Sec. 27 TTDSG).

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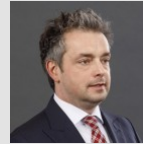
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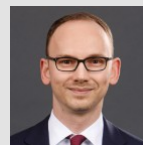
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