

Revised telecoms legislation enters into force

08 January 2021 | Contributed by [Walder Wyss](#)

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Introduction

Parliament has revised the federal telecoms legislation – in particular, the Federal Telecommunications Act (TCA) and its various implementing ordinances. These revised regulations entered into force on 1 January 2021.

The revision of the telecoms legislation brings about several fundamental changes that affect consumers as well as telecoms service providers (TSPs) and telecoms operators.

Consumer protections

The revised Swiss telecoms legislation offers increased protection for consumers in different areas.

Concerning international roaming, per-second pricing (instead of per-minute pricing) and tariff options should benefit consumers by reducing costs. Moreover, the revised Ordinance on Telecommunications Services (OTS) provides information and transparency obligations for mobile operators. These operators must therefore inform their customers of the terms and conditions applicable to international roaming:

- at the time of contract conclusion;
- when activating or reactivating roaming services; and
- at least once a year.

In addition, the revised OTS creates an obligation for mobile operators to measure the quality of internet access services and inform their customers about the actual service quality measurements – although carve-outs exist for small providers with fewer than 300,000 clients. Such measurements cover, in particular, the effective (ie, not theoretical) speed of internet access. Other amendments concern emergency calls, which must be guaranteed and must usually be free of charge.

Further, in the area of unfair marketing practices and telemarketing, a set of measures aim to better combat unwanted marketing calls and cold-calling practices. Due to a simultaneous revision of the Act against Unfair Competition (UCA), which also entered into force on 1 January 2021, it is no longer only cold marketing calls to persons whose name appears with an asterisk (*) in the telephone directory which are prohibited, but also cold marketing calls to persons that do not have a directory entry (see revised Article 3(1)(u) of the UCA). Further, marketing calls which do not display a phone number that is listed in the telephone directory and which the caller is entitled to use are also prohibited (see new Article 3(1)(v) of the UCA). Finally, the new Article 3(1)(w) of the UCA explicitly prohibits the use of information of which one has become aware as a result of a violation of the aforementioned Articles 3(1)(u) and (v).

According to the revised Article 45a(1) of the TCA, TSPs must combat unfair mass advertising (Articles 3(o), (u) and (w) of the UCA).

Regulation on net neutrality

'Net neutrality' refers to the possibility (or prohibition) of an internet access provider to technically or economically control or prioritise the type or source of data that it delivers (this includes speed throttling and other distinctions such as content, service classes and protocols which affect end-user internet access). Until

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now, no specific binding legislation on net neutrality existed in Switzerland, although some associations and network operators had agreed a non-binding code of conduct on the open internet, which took some steps towards net neutrality. The revised telecoms legislation regulates net neutrality, with some exceptions.

In principle, internet access providers cannot make any technical or economic distinction between providers, recipients, contents, services, service classes, protocols, applications, programs or terminals. Carve-outs allow internet access providers to:

- comply with provisions of mandatory law or court rulings;
- guarantee the integrity or security of the network, provided services or connected terminals;
- respond to an explicit customer request; and
- combat temporary and exceptional network congestion (in which case, similar data flows will be treated in a similar fashion).

Internet domains

The revised legal framework regulates domain names that are managed by the confederation – in particular, top-level domains with the '.ch' or '.swiss' extensions.

The revision also provides (more restrictive) norms on the disclosure of personal data relating to domain name holders (in the WHOIS databases). The revised Ordinance on Internet Domains foresees a restriction of the WHOIS database, according to which no personal data relating to the internet domain holder is to be published by default. Nevertheless, access to such data will still be granted to persons with a legitimate interest. This solution was strongly inspired by EU law.

Notification and registration of telecoms services

Importantly for telecoms operators and TSPs, the revised TCA does away with the general duty to notify provisions of telecoms services to the regulator and replaces it with a narrower notification obligation. From 1 January 2021, only TSPs and telecoms operators using addressing resources or licensed radio frequencies to provide telecoms services must notify and register the telecoms service with the Swiss telecoms regulator (OFCOM). Frequencies used for other purposes (own use, unlicensed) will therefore not be affected and will not trigger a notification obligation. Moreover, notably for TSPs relying on third-party resources, TSPs who use a subordinate allocation of number ranges and licensed frequencies must also register.

Consequently, under the new legal framework, TSPs still need to carefully assess any notification obligations in advance (ie, prior to operational roll-out).

Miscellaneous

Some ordinance amendments are of a purely technical nature. Notably, the current Frequency Management and Radiocommunications Licences Ordinance underwent a complete revision and has been repealed and replaced by a new ordinance.

Further, the Federal Council made technical amendments to the Ordinance on Telecommunications Installations, the Ordinance on Electromagnetic Compatibility and the Ordinance on Fees in the Telecommunications Sector.

Such technical amendments may call for a reassessment of the market actors' technical set-up and configuration.

Comment

In view of the many changes, TSPs, as well as all internet access providers and other providers, must carefully evaluate the implementation of their products and services in Switzerland to ensure compliance with the revised Swiss telecoms legislation.

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