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Consultation on Spanish Telecommunications Law: A Major Regulatory Development for Instant Messaging and Voice Over IP Services

A preliminary draft of the new Spanish telecommunication law subjects internet-based communication providers, of services such as instant messaging and voice over IP, to a significantly more burdensome regulatory regime than before. The proposed law is meant to implement the European Electronic Communication Code (Code) but places a substantially heavier regulatory burden on internet-based providers than the Code itself.

Due to come into force this year, the Code already expands the scope of European telecommunication law significantly. The Code changes the definition and introduces an additional category of electronic communication service (ECS): number-independent interpersonal communication services (NI-ICS). Interpersonal communication services include email, messaging services and group chats that are provided for remuneration, enabling communication between a finite number of natural persons as determined by the sender of the communication. The concept of remuneration is interpreted broadly and includes the provision of personal data by the user.¹ A service is number-independent if it does not connect with publicly assigned numbering resources.² Using numbers as an identifier is not in itself sufficient to qualify as a number-based ICS.³ Under the Code, NI-ICS providers are subject to a lighter regulatory regime than other more traditional electronic communication services. The recently published Spanish draft law applies a more burdensome framework to NI-ICS.

Unlike the Code,⁴ the Spanish draft law subjects NI-ICS providers to the general authorisation regime. Should the draft pass in its current form, NI-ICS providers will need to register with the Spanish telecommunications regulator CNMC,^{5,6} and providers with gross annual revenue in excess of EUR 1 million will be subject to an annual fee of 0.1% of their earnings.⁷ NI-ICS providers which already provide their services in Spain will have two months to register themselves from the point at which the law is published. The Spanish regulator considers failure to comply with the registration requirement as a serious breach, as was made clear earlier this year when the Spanish regulator opened disciplinary proceedings against Microsoft for its alleged failure to properly register their Skype Out service.⁸ At that time, the regulator made it clear that Microsoft needed to properly register Skype Out within five days or cease its activities.

NI-ICS providers may see this draft law as an alarming departure from the Code, which plainly exempts NI-ICS providers from the general authorisation regime. The Code makes it clear that NI-ICS should be subject

¹ Preamble 16 of the [DIRECTIVE \(EU\) 2018/1972](#)

² Article 2(7) of the [DIRECTIVE \(EU\) 2018/1972](#)

³ Recital 18 of the [DIRECTIVE \(EU\) 2018/1972](#)

⁴ Article 12(2) and (3) and preamble 44 of the [DIRECTIVE \(EU\) 2018/1972](#)

⁵ [La Comisión Nacional de los Mercados y la Competencia](#)

⁶ Article 6.3 of the [Draft of the General Telecommunications Law](#)

⁷ Article 1, Annex 1 of the [Draft of the General Telecommunications Law](#)

⁸ [The CNMC initiates a sanction against Microsoft Ireland for the lack of notification of its Skype Out service to the Registry of Operators](#)

to obligations only where public interests require that specific regulatory obligations apply to all types of interpersonal communications services, regardless of whether they use numbers for the provision of their service.⁹ It is not appropriate, according to the Code, to subject NI-ICS to the general authorisation regime because they do not benefit from the use of public numbering resources and do not participate in a publicly assured interoperable ecosystem.¹⁰

A one-month consultation period has started wherein NI-ICS providers can influence the final text of the law. Providers will want to argue that their inclusion in the general authorisation regime is not required by public interest. However, even if it were in the public interest, the Code states that the public interests must require that specific regulatory obligations be applied. NI-ICS providers may want to argue that Spain is going beyond the discretion afforded by the Code in applying the authorisation regime, which includes a several more burdensome requirements. To conform to the Code, all these requirements should be specifically required by public interest – each of which NI-ICS providers will want to dispute.

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⁹ Preamble 18 of the [DIRECTIVE \(EU\) 2018/1972](#)

¹⁰ Preamble 44 of the [DIRECTIVE \(EU\) 2018/1972](#)