

Law no. 154/2012 regarding the regime of the electronic communications networks infrastructure in Romania

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About ANCOM

ANCOM is the body that protects the interests of the communications users from Romania by promoting the competition in the communications market, ensuring the management of scarce resources, encouraging innovation and efficient investments in infrastructure.

The main tasks

- administrates and manages the radio spectrum;
- allocates numbering resources and manages associated technical resources;
- elaborates market studies and analysis;
- ensures the protection of electronic communications end users;
- controls and monitors the compliance of the obligations imposed on the postal services and electronic communications providers;
- controls the radio equipment and the telecommunications terminal equipment market ;
- implements the sector specific legislation for electronic communications and postal services and develops secondary legislation in these fields.

Law no. 154/2012

- the conditions for performing access on the public or private property – complying with the principles of **transparency**, **objectivity** and **non-discrimination**;
- how to use shared infrastructure elements;
- measures for building electronic communications networks.

Access on public property

- ✓ To publish the terms and conditions of public property access and the **list of documents** that the supplier must submit to prove the fulfillment of these conditions;
- ✓ To convey to ANCOM a **copy of the access conditions** originally set and, if appropriate, of the further changes/additions;
- ✓ To answer in maximum 30 days from the date of the request for access; otherwise the application shall be deemed tacitly approved ;
- ✓ To modify, upon suppliers' request, the contracts concluded before the entry into force of the Infrastructure Law;
- ✓ **Not to give and not to maintain special or exclusive rights** for installing or providing electronic communications networks; if, following a negotiation, in a contract it provides better conditions to a supplier, then, these conditions, will be offered to all other suppliers;
- ✓ To request ANCOM's **advice of conformity**, in case of installation of the infrastructure projects realized with the participation or the support of the central/local administration authorities or financed, totaly or partialy, from public funds.

ANCOM's advice of conformity

Stages:

- In case of installation of the infrastructure projects realized with the participation or the support of the central/local administration authorities or financed, totally or partially, from public funds, as well in case of such projects that are in progress, the public authorities have the obligation to transmit ANCOM the technical and economic conditions under which the access of suppliers to infrastructure is made.
 - ANCOM analyzes the technical features of the products and services offered in projects, as well as the economic conditions (including supply terms, rates and rates formulas).
 - If some of these conditions seems to be discriminatory, un-objectives or un-proportionally, ANCOM requests the modification or the addition of the proposed condition.
 - In the absence of ANCOM's advice of conformity, the implementation of such projects may be attacked by any interested person in front of the competent administrative contentious court.
- 2 advices of conformity released by ANCOM: NetCity and RoNET.

The tariffs for exercising the right of access on public property (1)

- ✓ The tariffs for exercising the right of access on public property will be set by public authorities in a **transparent, fair, non-discriminating, justified and proportionally way**, considering degree of affecting the respective property;
- ✓ The tariffs will cover **ONLY direct and straight damages**, caused by the network installation works;
- ✓ The tariffs will take into account, when applicable, the added value brought to the respective property by the installation of electronic communications networks;

The tariffs for exercising the right of access on public property(2)

- ✓ **Other taxes, fees, charges or other amounts in addition to the amounts stated in the contracts cannot be established;**
- ✓ When installing networks on infrastructure parts placed on public property, the providers of electronic communications networks will owe charges exclusively to the person who owns or administers the infrastructure elements;
- ✓ At the end of the 6 months deadline (from the publication of the access condition and the tariffs for the works made before the entry into force of the Infrastructure Law), the legal provisions under which other taxes/rates for the access on public property are requested will be abrogated.

The access on private property

The owners/ owners' associations have the obligation:

- ✓ To conclude a contract for access on private property or to put into practice the court decision, which is the equivalent to a contract, as applicable;
- ✓ To ensure non-discriminatory conditions for all the electronic communication networks suppliers, including as regards the tariff.

The owners/owners' associations **do not have** the right to refuse the access of persons empowered by the provider, when this access is made in the conditions established by contract/judicial decision.

ANCOM created a model of the standard-contract for access on private property, available on www.ancom.org.ro, which the suppliers and owners can use as a starting point in elaborating their own contracts.

Infrastructure sharing

- ✓ As far as the public property access conditions are not fulfilled, and other infrastructure elements have already been installed in the respective area, the public authority will inform the provider who request the access that he can request the shared use of the existing infrastructure parts.
- ✓ When the public authority controls or holds infrastructure parts and it receives an access request to these infrastructure parts from a provider, the authority has the duty to publish the access conditions and to conclude access contracts for the respective infrastructure parts.
- ✓ If the infrastructure parts are leased to a private person, it will be concluded a contract between the supplier and this person. In this case, the provider owes only tariffs for the access to infrastructure parts, as set by the contract and not tariffs for the access on public property.

Specific technical norms

- they represent a set of rules based on which authorization of the infrastructure works for the public electronic communications networks, including the issuance of the coordination advice for such works, respectively the designing and set up of systematised tracks for the electronic communications networks will be conducted;

They set:

- the constructive characteristics, the minimum capacity to be ensured on the tracks corresponding to different categories of construction works,
- the protection areas for certain elements of the electronic communications networks or associated facilities,
- the procedure for the issuance of the technical advice attesting conformity with the norms, required for the issuance of the construction authorisation,
- the categories of advices and agreements necessary for the authorisation of infrastructure works with a view to installing electronic communications networks.

The technical rules are approved by a **Government Decision**, on the joint proposal of the **Ministry of Information Society** and the **Ministry of Regional Development and Public Administration**.

The Inventory of the public electronic communications networks and of their associated facilities

- For ensuring the enforcement of the legal provisions regarding infrastructure sharing, all the public electronic communication networks have the obligation to send to ANCOM, (also to update annually) full information about the development and the geographical location of the public electronic communication networks they operate and their infrastructure elements.
- ANCOM is considering to elaborate an inventory in an electronic map form, organised in a geographical information system (GIS).
- Considering the great scale of the project, ANCOM implemented a pilot-project in the city of Brasov. ANCOM is working now on expanding nationwide this project.

ANCOM information campaign

- to create a dedicated section on www.ancom.org.ro – *Infrastructure Law*, structured on each category of audience: electronic communication networks providers, public authorities, owners/owners' associations and infrastructure owners;
- to inform the public local administration authorities, the electronic communication networks providers and the possible owners of infrastructure,
- individual meetings with the representatives of the villages, cities and municipalities across the country (**3267**),
- the participation of ANCOM representatives in plenary meetings organized by local public authorities (**33**).

The database with the access conditions on public property (available on www.ancom.org.ro) – about **1200** of published access conditions.

A guide for setting the tariffs for access on public property (ongoing project in 2014).

Thank you!

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