



Digital Networks Act (DNA)

COM(2026) 16

Executive summary

Digital communications markets and infrastructures are an essential part of modern life. They are an indispensable prerequisite for social life, education, national security and the functioning of the economy and many other infrastructures.

High-quality, secure and resilient infrastructure is essential to the European Union's future. The European legal framework must therefore be further developed and adapted to meet the challenges ahead.

Changes to the legal framework **must not worsen consumer protection** or weaken competition at national level. They must continue to ensure efficient and effective regulation.

Key points at a glance

- Current consumer protection standards must not be allowed to deteriorate.
- Member States should continue to have the flexibility to regulate their national markets, in particular to further develop consumer protection provisions.
- Many provisions are too vague to be applied directly. Thus, Member States and regulatory authorities must have sufficient room to manoeuvre.
- No excessive obstacles for regulatory authorities when conducting market analyses and taking measures.
- A comprehensive universal service should be available. The ability to oblige an operator to provide this service should not be weakened by vague terminology.
- The principle of an open internet must be fully upheld.
- Phasing out copper networks must not result in the (financial) detriment of consumers. Migration should be voluntary.

AK's position

General

Since liberalisation, communications markets have evolved rapidly as a result of technological progress and increasing competition, with the existing regulatory frameworks set out in the EEC (European Electronic Communications Code) and the national regulatory authorities having served their purpose well to date. However, in transposing the EEC from a directive into the DNA as a regulation, the text sometimes lacks the specificity needed to ensure effective implementation without scope for national legal interpretation.

Changes **must not lead to any deterioration in the position of consumers** or to a weakening of competition at national level. In this respect, the draft DNA appears to be in need of improvement.

Communications markets are closely intertwined with local infrastructure and vary in terms of their legal frameworks governing consumer rights and other areas of national law. Member States and national regulatory authorities must therefore **retain** broad autonomy.

On institutional reform and Single Passport Procedure

In addition to the national regulatory authorities (NRAs) and BEREC, the DNA is now also introducing the ODN (Office for Digital Networks).

The 'Single Passport Procedure' is intended to enable operators to notify their services to just one regulatory authority of their choice, which in turn must inform all other relevant NRAs.

It is questionable whether this arrangement simplifies matters or instead increases procedural complexity for regulatory authorities and delays coordination between the institutions.

Radio frequencies

Article 24 of the DNA proposes that rights to radio

frequencies should generally be granted indefinitely. Where frequency usage rights are time-limited, the minimum term should be 40 years.

It should be noted that radio frequencies are a scarce resource and that, in some cases, they need to be allocated on an individual basis as part of an open and non-discriminatory allocation procedure. This is also intended to ensure the efficient use of radio frequencies and to prevent the 'hoarding of frequencies.'

A granted period of 40 years seems too long to take account of changes and to meet the demand for scarce resources in an appropriate manner.

Moreover, the duration of usage rights is naturally reflected in the price offered during allocation procedures, such as auctions. The longer the usage rights, the higher their value tends to be. This can result in small operators in particular being unable to bid in auction procedures and thus being excluded from these blocked resources for decades.

Numbering

Until now, it has been the responsibility of the Member States to define and allocate numbering resources. However, Article 46 of the DNA now defines numbers as a 'common Union resource'. The Chamber of Labour recognises that coordinating certain numbering resources within the Union is sensible and that some Union-wide harmonised numbers or number ranges can benefit specific services. Nevertheless, comprehensive coordination with the Member States and NRAs is required. Under no circumstances should further harmonisation of numbering resources result in significant changes to national numbering plans.

Competition regulation and market analysis procedures

In view of high initial investment and generally falling marginal costs, communications markets still continue to tend towards monopolisation.

The previous system, involving regular market analyses and the imposition (where appropriate) of ex-ante obligations, has, in principle, proved its worth.

Whilst the proposal for the DNA essentially retains this framework, it introduces a number of changes, such as the Commission is no longer obliged to adopt a recommendation on on relevant product and service markets, , or a tiered procedure for imposing obligations under Article 77 of the DNA. According to the latter provision, national regulatory authorities are required to provide additional justification or conduct further assessments during the market analysis process if they wish to impose certain conditions.

Apart from reducing the effectiveness of the regulation, proceedings may be prolonged and legal uncertainty created.

Harmonised access products

Article 81 of the DNA sets out the treatment of **harmonised access products** across Europe, such as FTTH unbundling or Ethernet leased lines (Recital 207). These harmonised access products, the details of which are yet to be defined, may **also be at local level**.

As part of competition regulation, NRAs may oblige undertakings with significant market power to provide access products that are harmonised across Europe. If they wish to impose access products other than those harmonised across Europe, they must explain separately why these are more appropriate.

This entails a significant amount of additional red tape. Meanwhile, it is difficult to see any advantage in the proposed arrangement.

Overall, this regulation appears ill-conceived and fails to take account of the differing structures of local markets that have developed over time, even though these play a crucial role in determining the choice of measures in effective competition regulation.

Internal market procedures for market regulation

Article 85 of the DNA introduces an expanded **right of veto**. Under this provision, the Commission can veto draft measures proposed by national regulatory authorities. It is precisely the role of national regulatory authorities to have a particularly good understanding of their national circumstances, to analyse them and to propose appropriate measures. Such a far-reaching right of veto at European level undermines the implementation of effective and appropriate measures to

safeguard competition.

Consumer protection

The introduction of a new legal framework by the DNA must not result in **any reduction in the level of consumer protection**. It should be possible to retain more favourable provisions for consumers in individual Member States. Member States should likewise retain the scope to further develop their consumer law and adapt it to emerging issues. Article 3 of the DNA sets out the general objectives and principles, essentially incorporating Article 3(2) of the EECC, whilst the new Article 3 should enshrine the guarantee of a high and common level of protection **for all end-users**.

Switching to fibre-optic networks

In Articles 53 to 61 of the DNA, the Commission proposes a mandatory transition to fibre networks; hence, copper networks are to be phased out.

The timetable proposed in Articles 54 et seq. of the DNA, which involves phasing out copper networks in the so-called 'Copper Switch-Off Areas' (CSO areas) by the end of 2035, appears to be virtually impossible to implement and will unnecessarily result in the forced migration of end-user connections.

In the AK's view, end-users should primarily switch from copper to fibre networks on a voluntary basis. Furthermore, fibre connections for consumers should be provided on transparent and reasonable terms and at comparable costs.

Under no circumstances should the decommissioning of copper networks cause financial detriment to consumers.

End users should also be informed in a timely and appropriate manner about the switching process and their rights and obligations. There should also be a mandatory independent point of contact for any queries, technical support and/or complaints, as well as a designated contact person at the respective fibre network providers.

Regarding Articles 87 to 92 of the DNA – Universal Service Obligations:

Availability of the universal service

Articles 87 et seq. of the DNA also regulate the universal service obligation. From a consumer perspective, it is to be welcomed that everyone, regardless of their financial situation, is enabled to

participate in digital life.

AK generally welcomes the outlined approaches. However, it should also be made absolutely clear that this ‘minimum standard’ must encompass a level of quality that enables modern services to be used adequately and without difficulty. The relevant recitals should therefore be amended for the sake of clarity, so as to make it clear that an **appropriate service**, or an **appropriate range of services**, must be guaranteed.

In connection with the universal service, the DNA should also stipulate that users are entitled to receive it and must not be denied access on the grounds of creditworthiness or for any other reason.

According to Article 90 of the DNA, where it is established that the availability of an adequate internet and voice service cannot be guaranteed, Member States shall first use public policy tools before imposing universal service obligations. It remains unclear what is meant by ‘public policy tools’ and when universal service obligations may be imposed. This creates legal uncertainty. A comprehensive universal service should be available. Thus, the possibility of obliging an operator to provide this service should not be undermined by unclear terminology.

Barring calls

According to Article 91(2)(a) of the DNA, consumers may implement selective barring for, amongst other, outgoing calls. Annex VI, Part A, point (b) of the EECC has been incorporated, although the phrase “free of charge” has not been included. This addition, which is important from the consumer’s point of view, should be reinstated.

Cost control

Article 91(2)(g) of the DNA requires a “facility to deactivate third-party billing”. In reality, this is an issue that leads to high, unintended costs for consumers. Thus, the wording should be amended to “faciliti to **activate** third-party billing,” thereby preventing unexpectedly high costs.

Open Internet

AK emphasises that access to an open internet, in which all data flows are treated equally, is particularly important. We welcome measures that ensure this in the long term.

Articles 93 and 94 of the DNA therefore incorporate the previous Regulation (EU) 2015/2120 on access to the open internet into the DNA. However, several

clarifications and specifications from the recitals of the previous Open Internet Regulation have not been incorporated into the DNA in the same form, thereby weakening the interpretation and application of the Open Internet rules. The relevant recitals should therefore be incorporated into the DNA (in particular recitals 1 to 19 of the Open Internet Regulation).

Under Article 93(6) of DNA, the Commission is empowered to adopt implementing acts detailing the operational conditions and guidelines for offering “specialized services” (services other than general internet access that require optimized network performance). Because the Commission is not required to adopt such implementing acts, this approach would transfer to it the power to let national regulatory authorities define further details in line with the relevant BEREC guidelines. Nevertheless, there is a concern that this could result in the provisions being watered down. However, clarifying the rules on services that are not internet services is necessary to effectively guarantee access to an open internet and to ensure that the rules are enforceable. Thus, the power to specify the details should remain with the relevant regulatory authorities and BEREC.

Moreover, the DNA should supplement access to the open internet with effective provisions regarding end-users, enabling them to make informed decisions, for example through information requirements regarding the ‘realistically available speed.’ Providers may be inclined to interpret this figure generously, so these provisions should be supplemented with a **guaranteed minimum speed** that must always be met.

End-user rights

From the consumer’s point of view, the **current level of protection must under no circumstances be reduced**. The end-user rights set out in Articles 98 to 116 of the EECC have largely been incorporated into Title III, Chapter I of Part VI of the DNA; however, due to the proposed form of this legal act as a regulation, they now apply directly to service providers rather than to the Member States, which previously had to transpose these provisions into national law. However, the legislation now proposed for direct application sometimes lacks the necessary clarity and precision to enable it to be implemented in practice.

Article 95 of the DNA essentially mirrors Article 102 of the EECC and, in paragraph 1, refers to Annex III of the DNA, which is intended to replace Article 102 and Annex VIII of the EECC; from a consumer perspective, these contain unacceptable deviations (e.g. regarding information requirements on certain aspects of service quality). In our view, these points should be

reinstated.

Contract summaries

With regard to the model contract summary, the Commission may, according to Article 95(2) of the DNA, adopt implementing acts setting out a contract summary template.

In order to ensure greater comparability and transparency for consumers, the European Commission's obligation to adopt implementing acts relating to the contract summary template should be retained.

The timing for finalising the contract summary and providing it to the consumer will also change.

In our view, the wording of Article 102(3) of the EECC should be used. Consumers should receive the completed summary of the **contract before being bound**. If this is not possible before conclusion of the contract for objective technical reasons, the contract should take effect only after the consumer has received the contract summary and given consent.

Furthermore, the contract should only take effect upon the consumer's express confirmation following receipt of the summary of the contract.

Usage limits and itemised bills

Article 95(5) of the DNA incorporates the corresponding provision from the EECC, with the caveat that it is no longer clear who defines the "pre-determined usage limits"; previously, this was the responsibility of the competent (national) authorities (in consultation with the NRAs). In our view, the option to continue setting national usage caps should be retained, not least so as not to undermine the well-established and tried-and-tested national regulations.

The same applies to itemised bills following Article 95(6) of the DNA. Here, too, the options for providing detailed information are being removed at national level, which, from a consumer perspective, must be strongly opposed.

Transparency

Article 96 of the DNA governs **transparency** in the sense of the obligation to publish certain information listed in Annex IV and stipulates that Member States may not introduce or maintain provisions that are either stricter or less stringent.

The requirement to provide an independent compari-

son tool is to be abolished. Whilst regulatory authorities are to be able to certify comparison tools, they will no longer be obliged to offer such certification.

However, the comparison tools available to date have proved their worth and are an important initial source of information for consumers, enabling them to gain an overview of the leading providers, their prices, their services and the technology they use.

Therefore, the requirement to provide at least one independent comparison tool should therefore remain in place. It is also unclear whether national provisions allowing regulatory authorities to scrutinise general terms and conditions can remain in force.

Particularly as Article 103 of the EECC is now to be replaced by Article 96 of the DNA, it should be made clear that national review mechanisms for these notified general terms and conditions remain possible.

Contract terms

Article 97 governs the conditions and procedures for contract termination, stipulating that the minimum contract term must not exceed a period of 24 months.

A minimum contract term of 24 months significantly restricts the ability to switch providers. For this reason, the minimum contract term should be reduced from 24 months to 12 months.

The option to introduce shorter maximum contract terms in Article 97(1) of the DNA should therefore be retained.

Contract extensions and notice periods

Article 97(2) of the DNA governs the automatic prolongation of a fixed duration contract and stipulates that, following such a prolongation, consumers may terminate the contract at no cost, subject to a notice period of no more than one month.

However, many contracts are open-ended from the outset, usually with an initial fixed duration. It should therefore be clarified that a one-month notice period applies to all contracts once any fixed term has expired.

Article 105(3) of the EECC, which required providers to inform end-users of the best tariff at least annually, has also been deleted. This provision should be retained.

Some Member States, such as Austria, have also introduced rules on the obligation to provide timely

information – for example, at the end of a contractual commitment – to enable consumers to switch tariffs or providers in good time before the contract or commitment ends, should they wish to do so. However, under Article 97(6) of the Digital Networks Act (DNA), Member States are no longer permitted to adopt or maintain national rules that deviate from this Article.

However, **this national flexibility must be preserved** to ensure that end-users in Member States with a generally high level of consumer protection do not experience any deterioration in their position.

Termination of contracts

Article 97(3) of the DNA governs consumers' right to terminate a contract in the event of changes in the contractual conditions that are not exclusively to their advantage. Providers must notify consumers of changes to the contractual conditions at least one month in advance and, at the same time, inform them of their right to terminate the contract at no extra cost. The possibility for Member States under the EECC to extend this deadline by up to three months has been removed. In our view, the option to extend the deadline should certainly be retained, as it allows for a better assessment of price dynamics and tariff models than is possible within a single month.

Article 97(4) of the DNA now also regulates significant deviations in relation to internet access services. From AK's perspective, it should be noted that, even in the event of any other deviations outside these certified control mechanisms, the legal remedies in accordance with national law may be invoked.

Compensation payment

Article 97(5) of the DNA incorporates Article 105(6) of the EECC, except for the option allowing Member States to specify alternative methods for calculating the compensation for retained subsidised terminal equipment. From the consumers' point of view, there should be better, clearer and, above all, more transparent rules on which value may be used. The contract summary under Article 95 of the DNA should specify the base figure and a transparent calculation method for any compensation payment.

The requirement to unlock the handset free of charge following an initial payment is welcomed. However, the same should also apply once the minimum contract term has been fulfilled.

The principle of member state leeway must be retained

Article 97(6) of the DNA stipulates maximum harmonisation, according to which Member States are not permitted to adopt divergent provisions. From a consumer's perspective, this is to be rejected.

End-user compensation

Article 100 of the DNA allows Member States to lay down stricter rules on compensation for end-users in the event of a breach of the provider's obligations, as well as in the event of delays or abuse during number porting or switching. This is welcomed from a consumer perspective. The previous provision in the EECC, under which end-users were to be informed of this right, was not incorporated into the DNA. From a consumer perspective, this is essential information which should therefore, in any event, be made mandatory.

End-user protection against fraudulent activities

Article 103 of the DNA governs the protection of end-users against fraudulent activities. A high level of protection against fraudulent activities is to be welcomed in principle. Nevertheless, blocking measures are a significant interference, creating tensions with net neutrality and potentially affecting fundamental rights. It is therefore essential that civil society organisations, consumer protection bodies and the academic community be involved in the drafting of guidelines under paragraph 3.

Providing a more specific definition of what may be regarded as fraudulent would increase legal certainty, particularly in this highly sensitive area.

To prevent these provisions from becoming a loophole for differential treatment of content, Article 103(1) of the DNA should require compliance not only with personal data protection rules but also with the rules on access to the open internet.



Contact us!

In Vienna:

Mathias Grandosek

T +43 (1) 501 65 12389

mathias.grandosek@akwien.at

Jasmin Reininger

T +43 (1) 501 65 12801

jasmin.reininger@akwien.at

Jakob Kalina

T +43 (1) 501 65 13720

jakob.kalina@akwien.at

Austrian Federal Chamber of Labour

Prinz-Eugen-Straße 20-22

1040 Wien, Österreich

T +43 (0) 1 501 65-0

www.arbeiterkammer.at

In Brussels:

Alice Wagner

T +32 (2) 230 62 54

alice.wagner@akeuropa.eu

AK EUROPA

Permanent Representation of Austria to the EU

Avenue de Cortenbergh 4-10

1040 Brussels, Belgium

T +32 (0) 2 230 62 54

www.akeuropa.eu

About us

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The main objectives of the 1991 established AK EUROPA Office in Brussels are the representation of AK vis-à-vis the European Institutions and interest groups, the monitoring of EU policies and to transfer relevant information from Brussels to Austria, as well as to lobby the in Austria developed expertise and positions of the Austrian Federal Chamber of Labour in Brussels.