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# Input on Slovenian draft law implementing the EECC



## Executive summary

DIGITALEUROPE thanks the Slovenian authorities for organising a consultation on the implementation of the European Electronic Communications Code (EECC).<sup>1</sup> DIGITALEUROPE has studied the proposed amendments to the existing Slovenian Law on Electronic Communications,<sup>2</sup> as set out in the draft law published by the Slovenian Ministry of Public Administration,<sup>3</sup> and wishes to share the below observations.

For practical reasons, our observations have been drafted in English. We hope that this is acceptable to the Slovenian authorities and thank you in advance for your understanding. DIGITALEUROPE also wishes to explain that our observations are based on a machine-based translation of the draft Law – we therefore apologise in advance for any misplaced requests that are purely due to translation inaccuracies.

DIGITALEUROPE appreciates the work that has gone into seeking to ensure that the draft Law reflects the positions taken in the EECC, particularly as regards number-independent interpersonal communications (NI-ICS).<sup>4</sup> With respect to the particular topics discussed below, however, DIGITALEUROPE considers that the provisions of the draft Law risk conflicting with the level of harmonisation provided in the EECC.

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<sup>1</sup> Directive (EU) 2018/1972.

<sup>2</sup> Electronic Communications Act, as amended.

<sup>3</sup> <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=10097>

<sup>4</sup> Art. 2(7) EECC.



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## Definitions (Art. 3 draft Law)

While the definitions in Art. 3 of the draft Law are broadly in line with those of the EECC, a number of definitions set out in the draft Law would benefit from further clarification and/or re-evaluation. In particular, the definitions in Art. 3 of the draft Law could be fully aligned with the corresponding terms in Art. 2 EECC, in particular with respect to the definition of the following terms:

- ▶▶ 'Number-based interpersonal communications service' (NB-ICS) in Art. 3(42) of the draft Law. While the definition of NB-ICS is broadly in line with that in Art. 2(6) EECC, further details should be included as to what is understood by 'use of numbers,' for instance in explanatory notes accompanying the law or any other appropriate means in accordance with Slovenian legal procedures.<sup>5</sup>
- ▶▶ 'Number-independent interpersonal communications service' (NI-ICS) in Art. 3(43) of the draft Law. Consistent with the definition of this term in Art. 2(7) EECC, the definition of NI-ICS should be supplemented so that, in addition to the recognition that an NI-ICS does not 'connect' with publicly assigned numbering resources, namely a number or numbers in national or international numbering plans, the wording in the second part of Art. 2(7) EECC is also included, namely 'or which does not enable connection with a number or numbers in national or international numbering plans.'

DIGITALEUROPE observes that a number of terms in Art. 3 of the draft Law are not defined in Art. 2 EECC. Their inclusion in the Slovenian transposition risks confusion. Examples are:

- ▶▶ 'Numbering elements' in Art. 3(10) of the draft Law and the references in this definition to names and addresses, which risks confusion especially when applying the terms NB-ICS and NI-ICS;
- ▶▶ 'Public communications service' in Art. 3(23) of the draft Law, which we urge should be aligned with the EECC's concept of publicly available electronic communications service (ECS);

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<sup>5</sup> Specifically, Recital 18 EECC explains that for purposes of defining NB-ICS, the assignment of numbers must be for providing end-to-end connectivity and that the purpose of enabling communication with numbers is to reach other end-users to whom such numbers have been allocated, via the publicly assured interoperable ecosystem. Therefore, as Recital 18 EECC states, '[t]he mere use of a number as an identifier should not be ... considered to be sufficient to qualify a service as a number-based interpersonal communications service.' A similar clarification should be provided in Slovenia's transposition.

- ▶ ‘Communication’ in Art. 3(31) of the draft Law, which could be aligned with the definition of ‘voice communication’;<sup>6</sup> and
- ▶ ‘Internet neutrality,’ which could be aligned with and refer to the Open Internet Regulation.<sup>7</sup>



## General authorisation framework (Art. 5 draft Law)

DIGITALEUROPE welcomes, in line with the position in Art. 12(2) EECC, the express exclusion of NI-ICS from the notification requirement in Art. 5(1) of the draft Law.

However, certain aspects of the notification requirements that apply to NB-ICS in Art. 5 of the draft Law appear to exceed those provided for in Art. 12(4) EECC. In particular, the mandatory requirement to notify changes to information provided within a fixed period of 30 days (Arts 5(1), (3) and (4) of the draft Law) and to notify planned termination of services within a fixed period of at least 90 days in advance (Art. 5(9) of the draft Law) exceed the requirements in Art. 12 EECC and Recital 58 EECC and could in some circumstances place a disproportionate burden on NB-ICS providers that the EECC does not contemplate. In order to avoid this, we urge removal of references to specific fixed timeframes from this article in the draft Law.



## Security of networks and services (Arts 112-113 draft Law)

DIGITALEUROPE respectfully suggests that the provisions in Arts 112 and 207 of the draft Law, addressing network security issues, should be fully aligned with Art. 40 EECC. At a more general level, DIGITALEUROPE encourages the Slovenian authorities to ensure that a proportionate and context-aware approach is taken with respect to the security requirements for NI-ICS, in accordance with the EECC’s Art. 40 and Recitals 94–97.

Consistent with Recital 95 EECC, recognition should be given to the fact that NI-ICS providers tend not to control the networks over which their services are provided; the appropriate security measures taken by NI-ICS providers will hence be different and lighter than those for traditional telecoms providers.

Furthermore, nothing in Art. 112 of the draft Law (or elsewhere in the draft Law, including in particular Art. 223(6) on interfaces to enable legal interception of

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<sup>6</sup> Art. 2(32) EECC.

<sup>7</sup> Regulation 2015/2120.

communications) should undermine the presumption of end-to-end encryption in Recital 97 EECC.

With the above in mind, DIGITALEUROPE makes the following observations:

- ▶▶ Art. 112(2) of the draft Law appears to place specific requirements on mobile network operators (MNOs) regarding third-party supply agreements, including a requirement to obtain prior consent of the government for any contracts to manage security risks with third-level service providers established outside the EU. DIGITALEUROPE suggests that, as a minimum, specific requirements be included in the final Law that would ensure the relevant authorities are required to demonstrate an evidence-based risk to national security as a condition for the application of this provision and that any purported extension to other operators should be subject to prior consultation and careful review.
- ▶▶ Art. 112(5) of the draft Law stipulates specific minimum requirements for the security plan that is to be drawn up under Art. 112(4) of the draft Law. DIGITALEUROPE considers that, given the nature of both NI-ICS and network independent NB-ICS and noting that such providers do not tend to control the networks over which their services are provided, a number of these minimum requirements are disproportionate for NI-ICS and network independent NB-ICS, e.g. identification of all security risks within the operator as well as those outside the operator. NI-ICS and network independent NB-ICS cannot reasonably be expected to have this type of information, which largely focuses on network integrity and therefore sits more properly with network operators. As such, NI-ICS and network independent NB-ICS should be expressly excluded from having to meet such requirements, or at the very least specific requirements should be adopted for NI-ICS and network independent NB-ICS allowing for greater flexibility in order to best address security considerations regarding the provision of their services.<sup>8</sup>
- ▶▶ Art. 113(1) of the draft Law appears to require operators to notify incidents 'as soon as they detect' them. DIGITALEUROPE observes that such requirement goes beyond Art. 40(2) EECC, which requires public

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<sup>8</sup> In this respect, we refer to the recent consultation and reflection process carried out by the Article 13a Expert Group on the establishment of the Technical Guideline on Security Measures under the EECC (which is to replace the existing Technical Guideline). In section 5.3, the Expert Group observes that 'depending on the setting, the type of network or services offered, the assets involved, etc., some of the security measures in this guideline may not be fully applicable to OTT providers. When assessing the compliance of providers with Article 40, Competent authorities should take into account the type of network or service offered, the assets involved, the threats and resulting risks for this network and service.' We therefore request the Slovenian authorities to duly take into account these considerations as well as the draft and final Guidance from the Article 13a Expert Group.

electronic communications networks or publicly available ECS to notify a security incident that has had a significant impact on the operation of networks or services ‘without undue delay.’ The wording in Art. 113(1) of the draft Law should be fully aligned with the corresponding provisions in Article 40(2) EECC.



## End-user rights (Arts 181 onwards draft Law)

DIGITALEUROPE considers that a number of provisions in this section of the draft Law (in particular, Arts 181–186 and Arts 192 and 194) would benefit from additional clarification and full alignment with the corresponding provisions in Title III EECC, on which they are based. In particular:

- ▶▶ NI-ICS should be explicitly excluded from those provisions that do not apply to them under the EECC. For example, there should be greater clarity that the monitoring and consumption tool referenced in Art. 193 of the draft Law will not apply to NI-ICS as such services tend to be provided at no monetary charge. In addition, overlapping and unnecessary duplication should be removed, with the relevant provisions streamlined and deleted as necessary, e.g. Art. 183(1) of the draft Law should be deleted given that the same subject matter is addressed in Art. 181.
- ▶▶ A number of the timeframes in this section impose strict notification requirements that exceed those in the corresponding provisions of Title III EECC. For example:
  - Art. 182(2) of the draft Law indicates that where the relevant contract summary cannot be provided for objective technical reasons prior to the conclusion of the contract, it should be ‘sent as soon as possible.’ DIGITALEUROPE notes that the corresponding requirement in Art. 102(3) EECC is to ‘provide without undue delay.’ DIGITALEUROPE respectfully urges the Slovenian authorities to ensure flexibility as to how relevant providers meet this obligation such that the reference in the translated Slovenian text to ‘send’ should not be understood prescriptively, but can be satisfied by ensuring the consumer is able to download the contract summary without undue delay. In addition, DIGITALEUROPE recommends the Slovenian authorities incorporate into this article specific reference to the contract summary template adopted by the European Commission in order enhance legal clarity.<sup>9</sup>

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<sup>9</sup> Commission Implementing Regulation (EU) 2019/2243.

- Art. 185(2) of the draft Law indicates with respect to NB-ICS, that the relevant notification to consumers regarding automatic prolongation of their contract should be provided ‘at least 30 days’ in advance. The corresponding requirement in Art. 105(3) EECC, however, is for this information to be provided in a prominent and ‘timely manner.’ DIGITALEUROPE respectfully requests that Art. 185(2) be fully aligned with Art. 105(3) EECC.
- ▶▶ The transparency requirements in Art. 192 of the draft Law should be fully aligned with the provisions in Art. 104(1) EECC and therefore apply only to NB-ICS providers where they offer services on the basis of terms and conditions.
- ▶▶ The position regarding the extent to which an NI-ICS provider might exert control over network elements in Art. 181(2)(2) of the draft Law should be fully aligned with the corresponding provision in Art. 103(1) EECC. As such, where control is considered to arise on the basis of a service level agreement (SLA), there should be a clear link between the relevant SLA and the purported control, i.e. the SLA must be to this exact effect of exercising control, rather than a vague reference to some form of ‘appropriate’ SLA.
- ▶▶ Art. 187 of the draft Law foresees a free cancellation right for customers in case of contract changes by the provider which are not exclusively to the benefit of the end-user, of purely administrative nature or imposed by law. This right can be exercised within 60 days from the notification of the changes. The Slovenian draft Law thereby proposes to use the right to deviate, as foreseen in Art. 105(4) EECC, from the standard period of 30 days – as applied in most countries. Such specific national deviations bring operational difficulties for operators working on a cross-border basis, which is usually the case for network-independent NB-ICS. We therefore kindly request the Slovenian authorities to consider reducing the period to 30 days.



## Access to emergency services (Arts 195-196 draft Law)

Art. 195(1) of the draft Law (in conjunction with the definition of ‘emergency communication’ in Art. 3(32)) may be understood as indicating that the obligation to ensure users can access the relevant emergency services number 112 free of charge applies beyond voice calls, to SMS, video, etc. as well as calls from vehicles using the eCall system.

By contrast, the equivalent provision in Art. 109(1) EEC, when read in conjunction with Art. 109(2) EEC, appears to apply only to providers of publicly available NB-ICS, where those services allow end-users to originate calls to a number in a national or international numbering plan. We would therefore welcome amendment of Art. 195(1) of the draft Law to establish a clear scope limited to providers of voice communications, as defined in the EEC.

In addition, DIGITALEUROPE has the following observations:

- ▶▶ The provision of detailed location information such as apartment number, floor number, etc. in Art. 195(6) of the draft Law could be disproportionate, particularly if applied to network-independent NB-ICS who will often not have access to this information.

DIGITALEUROPE draws the Slovenian authorities' attention to Arts 109(2) and 109(6) and Recitals 284, 286 and 290 EEC, which indicate that the obligation of NB-ICS to provide caller location information to emergency services should be based on technical feasibility.<sup>10</sup> Hence, we urge the Slovenian authorities to: (i) introduce a general recognition of technical feasibility into Art. 195(6) of the draft Law and/or accompanying guidance; and (ii) clarify the reference to 'technical possibility' in Art. 195(5) of the draft Law so as to better align with the position in the EEC especially with respect to network-independent NB-ICS.

- ▶▶ In certain sub-paragraphs in Art. 195 of the draft Law, it appears that NB-ICS providers are required to proactively prove technical inability to provide certain information and/or services before they can rely on this.<sup>11</sup> Such proactive reversal of burden of proof as a form of condition represents a disproportionate requirement for network-independent NB-ICS which conflicts with Art. 181(3)1) of the draft Law and the

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<sup>10</sup> See for example Recital 286 EEC which states: 'For [such] network-independent providers, namely providers which are not integrated with a provider of public electronic communications networks, providing caller location information may not always be technically feasible.' Indeed, even for NB-ICS it may not always be technically feasible to localise the user accurately and/or to route the call to the appropriate PSAP, especially where NB-ICS are network-independent. The criticality of technical feasibility is also recognised by Annex VIII, B II. 1) EEC which explicitly foresees that providers of publicly available NB-ICS allowing end-users to originate calls to a number in a national or international numbering plan shall provide information on any constraints on access to emergency services or caller location information due to a lack of technical feasibility. Under the draft Law, this provision is proposed to be implemented by Art. 181(3)1).

<sup>11</sup> For example, Arts 195(4) (technical incapacity to ensure uninterrupted operation of emergency communication transmission, provision of free alternative routes, including equipment which means the authority does not have to carry out a software or hardware upgrade), 195(5) (technical incapacity to provide caller location information) and 195(9) (technical impossibility of providing unique display of outgoing calls in the form of a 3-digit call number 112 or 113).



aforementioned provisions/recitals of the EECC. We therefore urge that such conditionality be removed.

- ▶▶ The prescriptive requirements in Art. 195(8) of the draft Law for NB-ICS to provide information on the existence and use of emergency numbers, as well as ways to ensure accessibility, 'by post on their websites and in a directory in a prominent place' exceed Art. 109 EECC. Instead, the draft Law should be amended so as to afford NB-ICS providers flexibility as to how best to publicise these transparency requirements.
- ▶▶ Art. 196(2) of the draft Law on public warning systems requires mobile NB-ICS, on request, to provide information 'on the number of mobile phone users located' in the relevant area referenced in Art. 196(1) of the draft Law, if the contractor has the information. There is, however, no such equivalent requirement in Art. 110 EECC. Moreover, it is unclear what purpose such requirement in Art. 196(2) of the draft Law serves. DIGITALEUROPE therefore urges caution with respect to the exercise of invoking such requests under this article to avoid disproportionate obligations being placed on relevant providers.



## Lawful intercept (Art. 223 draft Law)

Art. 223 of the draft Law applies significant lawful intercept requirements to operators, which would include application also to NI-ICS providers. Generally speaking, DIGITALEUROPE does not consider it appropriate for the Slovenian legislature to introduce new lawful intercept requirements for cross-border NI-ICS providers via electronic communications legislation, or to extend existing intercept rules that might exist in other laws to those providers without due consideration of the specific features of those providers' operations.

DIGITALEUROPE sets out the following specific comments on Art. 223 of the draft Law:

- ▶▶ Art. 223(4) indicates that in exceptional cases the operator must enable lawful interception of communications on the basis of an oral order, with a written copy of the order to be followed up within 48 hours. While this power is expressed to be exercisable in exceptional cases, DIGITALEUROPE is nevertheless concerned regarding the ability of the Slovenian authorities to request such far-reaching measures on an oral basis.
- ▶▶ Art. 223(5) requires operators to ensure a 30-year indelible registration of lawful interception of communications.

DIGITALEUROPE considers the above requirements inappropriate and disproportionate, especially for NI-ICS providers. More broadly, we are

concerned that this provision undermines the preference for end-to-end encrypted services that emerges from Art. 40(1) and Recital 97 EECC.

DIGITALEUROPE urges the Slovenian authorities to set technical law enforcement requirements for NI-ICS operators through consultation and dialogue with our members and other industry stakeholders. Prescriptive technical requirements could disproportionately restrict the freedom to provide services from another Member State as envisaged by the EECC, and may not be the most effective way to achieve Slovenian law enforcement requirements, given the features of our members' products, as well as our members' obligations under both the EECC and other Member State laws, to which they are subject.



## Provision of information (Art. 260 draft Law)

Consistent with Art. 21 EECC, which relates to enabling national regulatory authorities and other competent authorities to verify compliance with, among other items, general authorisation requirements and other rights of use, e.g. spectrum rights of use, DIGITALEUROPE requests that the scope of Art. 260 of the draft Law be expressly limited to those persons/undertakings who are properly subject to the general authorisation framework in Art. 5(1) of the draft Law. As such, NI-ICS should be expressly excluded from the scope of Art. 260 of the draft Law, which is inapplicable for NI-ICS providers.

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## About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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