

PROPOSED AMENDMENT TO THE LAW OF GEORGIA ON ELECTRONIC COMMUNICATIONS

EXPLANATORY NOTES

This document contains a draft proposal of an amendment to the Law of Georgia on Electronic Communication (the “**Amendment**”) implementing the EU Directive no. 2014/610/EU on measures to reduce the cost of deploying high-speed electronic communications networks (the “**Directive**”) and certain related matters. For the ease of reading the below document contains the wording of the entire Sections of the Electronic Communications Act which are affected by the Amendment.

The Amendment shall be read as follows:

- (i) non-underlined and non-bold text is the current wording of the Law of Georgia on Electronic Communications,
- (ii) **underlined and bold text** is the proposed new wording of the Amendment,
- (iii) ~~crossed text~~ is the deleted wording of the current Law of Georgia on Electronic Communications,
- (iv) **red bold text** is used for headlines of articles of the Law on Georgia on Electronic Communications, either current or newly proposed,
- (v) **highlighted text** is used for open points and points to be discussed within the GNCC.

AMENDMENT DRAFT DATED 15 NOVEMBER 2016:

Article 2 - Definition of terms used in the Law

z⁷²) infrastructure operator - means

- (a) electronic communication network operator.
- (b) an undertaking providing physical infrastructure intended to provide a service of production, transport or distribution of:
 - (i) gas;
 - (ii) electricity, including public lighting;
 - (iii) heating;
 - (iv) water, including disposal or treatment of waste water and sewage, and drainage systems; or

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- (c) an undertaking providing physical infrastructure intended to provide transport services, including railways, roads, ports and airports

z⁷³) physical infrastructure - means any element of an infrastructure operator's network (including but not limited to electronic communications network) which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings (including co-location areas), antenna installations, towers and poles; for avoidance of doubt cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption are not physical infrastructure within the meaning of this Law of Georgia on Electronic Communications

z⁷⁴) civil works - means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure

z⁷⁵) public sector body - means a state, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law.

z⁷⁶) bodies governed by public law – means bodies that have all of the following characteristics:

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they are financed, in full or for the most part, by the State, or regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law.

z⁷⁷) in-building physical infrastructure - means physical infrastructure or installations at the end-user's location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point

z⁷⁸) building access point – means a physical point, located inside or outside the building, accessible to electronic communication network operator, where connection to the in-building physical infrastructure is made available

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Article 11 - Main goals and functions of the Commission in the field of electronic communications

1. In the field of relation to electronic communications, the Commission shall independently regulate the activities of authorised persons, infrastructure operators and/or holders of a right to use the building access point and the in-building physical infrastructure, and the use of the radio frequency spectrum and/or numbering resources by licence and/or permit holders. It shall also adopt legal acts, monitor and control their execution, impose sanctions, within the powers determined by this Law, for identified violations in accordance with this Law and the Administrative Offences Code of Georgia.

3. The main functions of the Commission are:

f) to resolve, within its powers, resolve disputes **(i)** arising between authorised persons operating in the field of electronic communications, **(ii) between authorised persons and infrastructure operators**, and **(iii)** between such authorised persons and users;

q) Cooperate with the Ministry of Economy and Sustainable Development of Georgia or with person authorised by the Ministry in ensuring the single information point for public for information relating to, among others, existing physical infrastructure, civil works and in-building physical infrastructure in situations and for information stipulated in this Law.

Article 36 - Commencement of the review of a dispute

1. Disputes arising between authorised persons, infrastructure operators or holders of a right to use the building access point and the in-building physical infrastructure shall be resolved by the Commission within the powers granted by the legislation of Georgia, and disputes arising before the entry into force of this Law, in accordance with the normative acts invalidated upon the entry into force of this Law, except where the parties intend to regulate their relations in accordance with this Law.

2. An authorised person, infrastructure operator, public sector body or holder of the right to use the building access point and the in-building physical infrastructure may apply to the Commission to review and resolve a dispute **pursuant to this Law.**

2¹. Any party entitled to apply to the Commission to resolve a dispute pursuant to Articles 55 to 55⁶ must not do so until there is no realistic prospect of the dispute being resolved without the intervention of the Commission.

Article 42 - Resolution of disputes

6. Disputes between entitled parties shall be resolved within the shortest possible time frame, other explicitly stipulated periods in this Law remain unaffected.

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6¹. The term for reviewing a dispute on interconnection shall be one month. If the parties cannot reach an amicable settlement during a review of a dispute on interconnection, the Commission may, on its own, specify the conditions for the interconnection.

Article 55 – Protection of electronic communication networks, use of state-owned territory, of lands

1. Electronic communication network operators shall have the right, under conditions stipulated by applicable laws, to install electronic communications infrastructure in the land owned by them or to which a servitude has been established or where the electronic communication network operators have the right to use it on some other basis without changing the purpose of land.

2. In case the electronic communications infrastructure had to be removed or relocated, due regard shall be taken to minimising the impact on the electronic communications networks provided using the infrastructure. The electronic communication network operator owning or controlling such infrastructure has the right to compensation of costs incurred in connection with the removal or relocation of the electronic communications infrastructure. The compensation shall be paid by the owner of a property from which the electronic communications infrastructure had to be removed or relocated.

3. For the purposes of protecting line facilities and structures of electronic communication networks, the Government of Georgia shall establish procedures for protecting **and marking** ~~line~~ structures of electronic communication networks and their protection areas. Any earthwork within a structure's protection area may be performed only in agreement with the owner of the structure.

4. ~~Local self-government bodies~~ **Public sector bodies**, in coordination with the Commission, shall establish transparent and non-discriminatory procedures, **including calculation of a proper fee**, for granting to electronic communication network operators the right to install electronic communications network systems, their elements, technical facilities, equipment and additional resources on the territories and plots of land owned by such bodies.

4¹. Upon written request of an electronic communication network operator under this Law, any public sector body has the obligation to meet all reasonable requests for access, under proportionate, non-discriminatory and transparent terms, to the following assets owned by the public sector body:

- (a) lanes of state and municipal roads,**
- (b) publicly available open spaces, e.g. squares, plazas, land plots etc.,**
- (c) pipelines,**
- (d) water bodies and their shores,**
- (e) bridges,**
- (f) viaducts,**
- (g) tunnels and**
- (h) other structures.**

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for the construction of public communications networks. Upon the completion of installing, reconstructing or repairing assets listed above, the electronic communication network operators are obliged to put the shared/used assets into conditions in which it was provided to them.

5. Electronic communications network operators may, in agreement with the holders (owners) of the land and/or of the facilities, install electronic communications on any section of the land **and/or the facilities, for example** on bridges, in tunnels, in streets, in engineering structures, in collectors and in protected areas.

6. Natural and legal persons who design, construct and reconstruct ~~social infrastructure~~ **civil works** shall, in the cases determined by law, carry out the design, construction or reconstruction of the engineering structures by taking into account the possibility of the installation of electronic communication networks and facilities. The rules for buildings at the end-user's location are in more detail stipulated in Article 55⁵ of this Law.

7. Design, construction and installation works of electronic communication networks and facilities shall be performed at the expense of the construction project owner, in compliance with the technical standards defined for the construction of electronic communication networks and facilities.

8. Owners of the physical infrastructure shall be responsible for the maintenance of physical infrastructure.

Article 55¹ - Access to existing physical infrastructure

1. Infrastructure operators have the right, without prejudice to any specific safeguard needed to ensure safety and public health, to offer access to their physical infrastructure to electronic communication network operators for the purpose of deploying electronic communications networks. Electronic communication network operators have the right to offer access to their physical infrastructure for the purpose of deploying networks other than electronic communications networks.

2. Upon written request of an electronic communication network operator under this Law, any infrastructure operator has the obligation to meet all reasonable requests for access to its physical infrastructure under non-discriminatory, fair and reasonable terms and conditions, including price, with a view to deploying electronic communications networks. Such written request shall specify the elements of the project, including physical infrastructure, for which the access is requested, including a specific time frame.

3. Infrastructure operators may only refuse to provide access pursuant to paragraph 2 above based on objective, transparent, and proportionate criteria, such as:

(a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements electronic communications networks referred to in paragraph 2;

(b) availability of space to host the elements of electronic communications networks referred to in paragraph 2, including the infrastructure operator's future needs for space that are sufficiently demonstrated;

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(c) safety and public health concerns;

(d) integrity and security of any network, in particular of critical national infrastructure;

(e) the risk that the planned electronic communications services would seriously interfere with the provision of other services over the same physical infrastructure;

(f) the availability of viable alternative means of physical network infrastructure access provided by the infrastructure operator and suitable for the provision of electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions.

4. Infrastructure operator shall conclude written agreement on access granting or state the reasons for the refusal of access in writing within one month from the date of the receipt of the complete request for access from the electronic communication network operator.

5. Where access is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the date of receipt of the request for access, the requesting party is entitled to refer the issue to the Commission pursuant to Article 36 of this Law.

6. The Commission shall issue, taking full account of the principle of proportionality, a binding decision to resolve the dispute, including the setting of fair and reasonable terms and conditions, including price where appropriate.

7. The Commission shall, following Article 42 of this Law resolve the dispute within the shortest possible time frame and in any case within three months from the date of the receipt of the complete request to the Commission except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

8. Where the dispute relates to access to the physical infrastructure of an electronic communication network operator, the Commission shall take into account the objectives set out in Article 4 of this Law. Any price set by the Commission shall ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the infrastructure operator to whom access is requested, in particular in the physical infrastructures used for the provision of electronic communications services.

9. The requirements on (a) the infrastructure operator pursuant to this Article, the (b) public sector bodies pursuant to Article 55, or (c) the holder of a right to use the building access point and the in-building physical infrastructure pursuant to Article 55⁶ of this Law shall not be taken to prejudice the property rights of the owner of the physical infrastructure in cases where the obliged person is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.

Article 55² - Provision of information relating to existing physical infrastructure

1. Electronic communication network operators have the right to access and the infrastructure operators have the obligation to provide access, upon request of the electronic communication

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network operator, to the following minimum information concerning the existing physical infrastructure of any infrastructure operator:

- (a) location, and route;
- (b) type and current use of the infrastructure; and
- (c) a contact point.

2. Infrastructure operators may refuse to provide or limit the provided information pursuant to paragraph 1 only if necessary to ensure:

- (a) security of the networks and their integrity,
- (b) national security, public health or safety.

3. Every public sector body and infrastructure operator holding, in electronic format, elements of the minimum information referred to in paragraph 1 concerning the physical infrastructure of a infrastructure operator, shall

- (a) provide such information to the Ministry of Economy and Sustainable Development of Georgia or person authorised by the Ministry. Any update to that information and any new element shall be provided to the Ministry of Economy and Sustainable Development of Georgia or person authorised by the Ministry within two months from the date of its receipt, and
- (b) make such information available, upon request, to electronic communication network operators, without prejudice to limitations pursuant to paragraph 2.

4. The Ministry of Economy and Sustainable Development of Georgia or person authorised by the Ministry shall make available the information provided to it pursuant to paragraph 3(a) above promptly via the website of the Ministry or the authorised person in electronic format and under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to paragraph 2.

5. Where the minimum information referred to in paragraph 1 is not available via the website of the Ministry or the authorised person as applicable according to paragraph 4, the infrastructure operators shall provide access to such information upon specific written request by an electronic communication network operator. Such request shall specify the area envisaged for the deployment of elements of electronic communications networks. Access to information shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to paragraph 2.

6. Upon the specific written request of an electronic communication network operator, the infrastructure operators are required to meet reasonable requests for on-site surveys of elements of their physical infrastructure specified in the request. Such request shall specify the elements of the network concerned with a view to deploying elements of electronic communications networks. On-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations pursuant to paragraph 2.

7. In the event of a dispute arising in connection with the rights and obligations provided for in this Article, either party is entitled to refer the dispute to the Commission pursuant to Article 36

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of this Law; only the requesting party is entitled to refer the dispute to the Commission if there has been no response to the request within the stipulated time limit.

8. The Commission shall, pursuant to Article 42 of this Law, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

9. Following a public consultation pursuant to **Article 55⁸**, the Commission may issue a decision with a list of exempted infrastructure to which obligations stipulated in paragraphs 1 – 9 shall not apply. **In addition, the Commission must consult the proposal of such decision with the Georgian National Energy and Water Regulatory Commission under the conditions of Article 55⁸.**

Article 55³ - Provision of information relating to planned civil works and construction sharing

1. Infrastructure operators shall make available upon a specific written request of an electronic communication network operator under proportionate, non-discriminatory and transparent terms the following minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or first submission to the competent authorities for permit granting is envisaged in the following six months:

- (a) the location and the type of works;
- (b) the network elements involved;
- (c) the estimated date for starting the works and their duration; and
- (d) a contact point.

2. The request of an electronic communication network operator pursuant to paragraph 1 shall specify the area in which it envisages deploying elements of electronic communications networks. Within two weeks from the date of the receipt of the written request, infrastructure operators shall provide the requested information under proportionate, non-discriminatory and transparent terms.

3- The infrastructure operator may limit the provided information only when necessary to ensure:

- (a) security of the networks and their integrity,
- (b) national security, public health or safety.

4. The infrastructure operator may refuse to provide the requested information only when:

- (a) it has made the requested information publicly available in electronic format; or
- (b) access to such information is ensured via the website of the Ministry of Economy and Sustainable Development of Georgia or the person authorised by the Ministry pursuant to Article 55²(4).

5. In the event of a dispute arising in connection with the rights and obligations provided for in this Article, either party is entitled to refer it to the Commission pursuant to Article 36 of this

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Law; only the requesting party is entitled to refer the dispute to the Commission if there has been no response to the request within the stipulated time limit.

6. The Commission shall, pursuant to Article 42, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

7. Following a public consultation pursuant to Article 55⁸, the Commission may issue a decision with a list of exempted infrastructure to which obligations stipulated in paragraphs 1 – 4 shall not apply. The Commission must consult the proposal of such decision with the Georgian National Energy and Water Regulatory Commission under the conditions of Article 55⁸.

Article 55⁴ – Provision of information relating to access to assets owned by public sector bodies, transparency

1. Public sector bodies that provided access to assets to electronic communication network operators pursuant to Article 55 paragraph 4¹ of this Law shall make available on their websites copy of any agreement entered into between the public sector body and the party to which the access to assets was granted. This paragraph does not apply to public sector bodies that do not have a publicly available website.

2. Public sector bodies shall also provide information pursuant to paragraph 1 to the Ministry of Economy and Sustainable Development of Georgia or to person authorised by the Ministry, which shall in turn make available such information to the public on their website as applicable according to Article 55²(4).

3. The public sector body may limit the provided information only when necessary to ensure:

- (a) security of the networks and their integrity,**
- (b) national security, public health or safety, or**
- (c) confidentiality or operating and business secrets owed to third parties.**

4. The following information shall never be considered confidential or operating and business secret pursuant to paragraph 3 and the published copy of an agreement pursuant to paragraph 1 must always include at least the following information:

- (a) type and location of the asset, and**
- (b) conditions, including price, of the granted access.**

5. Where the minimum information referred to in paragraph 1 is not available via the public sector body's website or the website of the Ministry of Economy and Sustainable Development or the authorised person as applicable in accordance to Article 55²(4), the public sector body shall provide access to such information upon a specific written request by an electronic communication network operator. Access to information shall be granted within one month from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms, without prejudice to the limitations pursuant to paragraph 3.

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6. In case the public sector body, the Ministry of Economy and Sustainable Development of Georgia or the authorised body do not make the information pursuant to paragraph 1 available on their website and/or provide such information upon request pursuant to paragraph 5, any authorised body may apply to a court.

Article 55⁵ - In-building physical infrastructure

1. All newly constructed buildings at the end-user's location, including elements thereof under joint ownership, must be equipped with in-building physical infrastructure, up to the electronic communications network termination points. All newly constructed multi-dwelling buildings must in addition be equipped with a building access point. Obligations stipulated in this Article shall also apply in the event of major renovation works.

2. The in-building physical infrastructure and the building access point stipulated in paragraph 1 shall allow for installation of at least two independent electronic communication networks of separate and unaffiliated electronic communication network operators.

3. The Ministry of Economy and Sustainable Development of Georgia may determine by the relevant act a list of categories of exempted buildings from the obligations under paragraph 1.

Article 55⁶ - Access to in-building physical infrastructure

1. Under the conditions stipulated in paragraph 3 of this Article, every electronic communication network operator has the right to roll out its network at its own costs, up to the building access point.

2. Under the conditions stipulated in paragraph 3 of this Article, every electronic communication network operator has the right to access any existing in-building physical infrastructure with a view to deploying electronic communications network if duplication is technically impossible or economically inefficient.

3. Any holder of a right to use the building access point and the in-building physical infrastructure shall meet all reasonable requests for access from electronic communication network operators under fair and non-discriminatory terms and conditions, including price, where appropriate.

4. Where agreement on access referred to in paragraphs 1 or 2 is not achieved within two months from the date of receipt of the formal request for access, each party has, pursuant to Article 36 of this Law, the right to refer the issue to the Commission in order to assess compliance with the requirements provided for paragraph 1. The Commission shall, pursuant to Article 42 of this Law, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within two months, except in exceptional circumstances, without prejudice to the possibility of any party to refer the case to a court.

5. The Ministry of Economy and Sustainable Development of Georgia may determine by the relevant act a list of buildings exempted from the obligation in paragraphs 1 and 2, where

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access to an existing network that terminates at the end-user's location and that is suitable for the provision of electronic communications services is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.

6. In the absence of available in-building infrastructure, every electronic communication network operator has the right to terminate its network at the premises of the subscriber, subject to the agreement of the subscriber, provided that it minimises the impact on the private property of third parties.

Article 55⁷ - Confidential information

1. It is the duty of an electronic communication network operator which acquires information in confidence from a infrastructure operator or the holder of a right to use the building access point and the in-building physical infrastructure as a result of the exercise of its rights under Articles 55 to 55⁶ to:

(a) use such information solely for the purpose for which it was supplied, restrict access to only those persons who require it for that purpose and respect at all times the confidentiality of the information provided; and

(b) not pass such information to, or allow it to be used by, any other person within the electronic communication network operator or otherwise.

2. Nothing in this Article affects any other rights a person may have to protect confidential information under applicable laws.

3. This Article does not prevent the disclosure of information:

(a) for the purposes of the electronic communication network operator obtaining professional advice about its rights and obligations under this Article;

(b) to the Commission where disclosure is required so that the Commission may carry out its functions under this Law;

(c) where required for the bringing and carrying on of proceedings before the court in relation to matters arising under this Law, in particular Articles 55 to 55⁶; or

(d) to any person, where disclosure is required under any other provision of Law of Georgia.

Article 55⁸ - Public consultation

1. Before the Commission issues a decision with a list of exemptions in accordance with

(a) Article 55² paragraph 9 of this Law,

(b) Article 55³ paragraph 7 of this Law;

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the Commission must publish at its website the proposal of such decision. The publication of the proposal must be in such a manner that the Commission deems appropriate for bringing the proposal to the attention of all persons who, in the Commission's opinion, are likely to be affected by the proposal.

2. The Commission shall specify the period within which comments, representations and observations may be made to the Commission in relation to the proposal. The period must be at least 30 calendar days after the day of the publication of the proposal.

3. The Commission may give effect, with or without modifications, to the proposal following a public consultation under this Article 55⁸ only if the Commission has considered every comment, representation or observation about the proposal that is made to the Commission within the period specified in the proposal in accordance with paragraph 2 above. The Commission shall publish the comments, representations and observations as well as the Commission's reactions.

4. The Commission may issue rules and procedures for public consultations under this Article 55⁸.

Article 64 – Transitional provisions

20. Obligations stipulated in Article 55⁵ (in-building physical infrastructure and building access points) shall apply to new buildings or major renovation works, for which application for building permit have been submitted after 1 January 2018.

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