

VIII. NETWORK POLICY / E-POLICY

The state policy in the field of information and communication technologies (ICT) is among the key issues when assessing the country's e-readiness for the Information Society (IS). The analysis below examines the governmental policy in the ICT sector in general focusing mainly on the legal framework of ICT as the most significant and powerful instrument for State intervention.

The state policy in the field of IS development is based on two main documents, adopted by the Government:

- **Strategy on Information Society Development of the Republic of Bulgaria adopted in October 1999.** The Strategy defines the national priorities for transition to IS at legislative, technological, economical and social levels and outlines the basic related activities. It combines the IS concept of the European Union with the national interests and the specific realities of the country: consolidation of the democratic system, European and Euro-Atlantic integration, market economy development, and currency board. The document takes into account the European Union Strategy, national strategies and programs for transition to IS of a number of European countries as well as political and legal documents of the European Union, the Council of Europe and other international organizations.
- **National Program on Information Society Development of the Republic of Bulgaria adopted in October 1999 and updated in April 2001.** The Program is based on the adopted Strategy and specifies in details the measures to be undertaken and the governmental body responsible for their implementation.
- **National Strategy for E-Commerce** adopted in June 2000.

VIII.1. Access to Information

The development of IS depends to a great extent on the legal regulation of the *access to information* and the *protection of citizens' communication rights*. The basis for the establishment of an effective legal framework for dissemination of information has been already created with the adoption of the new Constitution in 1991. The detailed regulation in this field has to be provided in three separate laws concerning the access to public information, the personal data protection and the confidential information:

- **The Law on Access to Public Information was adopted in July 2000.** It defines the term "public information" and declares the principle of free and unlimited access to such information. The Law also specifies the procedures for obtaining public information and the authorities responsible for its provision.
- **The Law on Personal Data Protection was adopted in December 2001.** It corresponds to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data and is considered as a prerequisite for the ratification of Convention No. 108 of the Council of Europe for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed by Bulgaria in June 1998. The Law

specifies the obligations of the persons dealing with personal data processing, the protection of such data, and the terms and procedures for providing access to personal information and also envisages the establishment of an independent Commission on Personal Data Protection.

- **The Law on Protection of Classified Information is still in process of adoption.** The development of legal and institutional framework in the field of confidential information protection is a strategic priority of the Government in the process of NATO integration and a key element in the NATO Membership Action Plan adopted in Washington in 1999. The Draft presented to the Parliament by the Council of Ministers envisages the establishment of a modern legal framework in conformity with the NATO policy and standards and specifies the principle and procedures for the protection of classified information as well as the responsible specialized authorities and their powers. The Draft also provides for the establishment of a State Commission on Security of Information to carry out the overall organization, coordination and control in this field.

VIII.2. Telecommunications

The legal regulation of telecommunications is provided by the Law on Telecommunications adopted in 1998. In 2001 substantial amendments to the Law have been introduced, which will enter into force on February 5, 2002. The Law defines the terms “telecommunication” and “telecommunication activity” and specifies the regimes for operation of the telecommunication operators.

The Law envisages a number of *authorities* exercising powers in the field of telecommunication:

- **The Council of Ministers** determines the state policy in the field of telecommunications by adopting Sector Policy for the Telecommunications. The Sector Policy lays down the strategy, the principles and the stages of development of sector “Telecommunications”.
- **The Minister of Transport and Communications** implements the telecommunications policy on the basis of the Law on Telecommunications and the Sector Policy and also adopts the respective secondary legislation.
- **The Council for the National Radio Frequency Spectrum** at the Council of Ministers carries out the state policy on the radio frequency spectrum (the spectrum including the frequencies between 3 kHz and 3000 GHz).
- **The Commission for Regulation of Communications**³² as an independent specialized state authority implements the sector policy by regulating and supervising the implementation of telecommunications.

The legal framework of the competent authorities follows the principle of dividing the functions related to the state governance (assigned to the Ministry of Transport and Communications) and the ones related to the regulation of the telecommunication market (assigned to the Commission on Communications Regulation) and provides

³² Until the establishment of the Commission for Regulation of Communications the overall regulation and control of telecommunications will be exercised by the currently operating State Telecommunications Commission.

clear differentiation between the powers and responsibilities of the institutions dealing with telecommunications.

According to the Law on Telecommunications the telecommunication operators perform their activities on the basis of three different *regimes*. Clear and transparent criteria for the application of these regimes are provided following the overall objective of gradually removing the regulatory barriers in front of the telecommunication activities. The general legal framework for the issuance of licenses for telecommunication activities performance follows the European Union regulatory framework outlined by Council Directive 97/13/EC of 10 April 1997 on a common framework for general authorizations and individual licenses in the field of telecommunications services. The following regimes are currently applied, regulated by Ordinance 13 of the Ministry of Transport and Communications

- **Individual licensing.** Individual licenses are needed for the performance of several telecommunication activities explicitly listed in the Law. The individual licenses are personal and are issued by the Commission on Communications Regulation either with or without a tender or a competition. Limitations are envisaged for the transfer of the individual licenses issued. With few exceptions they could not be transferred to third parties within a certain period after their issuance (three years if the license has been issued with a tender or a competition and one year in the other cases). After the expiration of this period the licenses could be transferred following a prior consent of the Commission on Communications Regulation. The term of validity of the individual licenses is twenty years with a possibility for extension with the total duration not exceeding thirty-five years. The issuance of individual licenses is not free and state fees are collected depending on the type of the telecommunication activity.
- **General license registration.** The general licenses determine the conditions under which everybody who wishes and meets these conditions could carry out telecommunications activity. The scope of application of this regime is also explicitly determined by the Law and state fees are collected for the registration.
- **Free regime.** The free regime applies for all the cases that do not fall under the scope of application of neither the individual licensing nor the registration under general license.

According to the Law the *telecommunication services prices* are freely determined by the telecommunication operators according to the demand and offer on the home market and providing equality of the users. The prices of the services provided by operators who have established dominating position on the market as well as of the services for which it is established that they are provided by abusing the dominating position or disloyal competition in the context of Bulgarian protection of competition legislation are regulated by the Commission on Communications Regulation. The regulation is performed through determining the price limits, rules and principles for price formation and concrete prices for a period of six months to one year.

In accordance with the Constitution the Law on Telecommunications has established *state monopoly* on the submission of fixed voice services (urban, interurban, international and transit) between end points of fixed telephone network, the renting

of lines under publicly announced conditions and the implementing of cross-border transmission of voice in real time for the purpose of conceding international voice services by the public telecommunication operators. The activities subject to state monopoly are performed by the state-owned Bulgarian Telecommunication Company on the basis of a special license. The monopoly will be effective till December 31, 2002.

VIII.3. Electronic media

The Law on Radio and Television adopted in 1998 and substantially amended in 2001 regulates the radio and television activities performed by the radio and television operators on the territory of Bulgaria. The operators are divided into two main groups: *commercial operators* and *public operators*. Bulgarian National Television is the national public television operator and Bulgarian National Radio is the national public radio operator. They both have specific status according to the Law and are partially funded by the state budget.

The rest of the radio and television operators perform their activities on the basis of either *licensing* or *registration regime* depending on the technological means of broadcasting. The licensing as well as the registration is performed by the Council on Electronic Media as an independent state authority responsible for the overall regulation of and control over the radio and television operators' activities. Both the licensed and the registered operators are obliged to pay initial and annual state fees in the amount determined by the Government.

VIII.4. Electronic Document and Electronic Signature

The newly adopted Law in Electronic Document and Electronic Signature is effective since October 7, 2001. The Law corresponds to the main principles of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

The Law defines the terms "electronic statement" and "electronic document", envisaging provisions on the signatory, the owner, the addressee, and the intermediary of an electronic statement as well as on the determination of the time and place of sending and receiving electronic statements. The Law also stipulates that with the composition of an electronic document the written form is considered observed.

Three types of electronic signatures are specified (simple, advanced and universal) depending on both the technological means used for their creation and their legal validity. The simple and the advanced electronic signatures have the effect of the handwritten signatures except for the cases where the owner or the addressee of the electronic statement is a central or local state authority, while the universal electronic signatures have the same effect also in the public sphere.

The status of the certification-service-providers and their relations with the owner and the signatory are also regulated. A registration regime is envisaged for the providers issuing certificates for universal electronic signatures. The registration is performed by the Commission on Communications Regulation.

Initially the electronic document and electronic signature will be applied in the commercial turnover, while additional legislative changes or governmental acts are needed to expand their implementation in the operation of public administration and other state institutions.

The effective implementation of the Law depends to a great extent on the *timely adoption of the respective secondary legislation*. Unfortunately the deadline for its preparation and adoption was not observed by the responsible state institutions – the State Telecommunications Commission³³ and the Council of Ministers. However in the very end of 2001 the State Telecommunications Commission successfully finished its work on the preparation of the draft regulations and presented them to the Government for adoption, although it is expected that they will not be adopted before the establishment of the Commission on Communications Regulation.

VIII.5. Copyrights

Copyrights are regulated by the Law on Copyrights and Related Rights adopted in 1993. The Law includes special provisions concerning the *protection of copyrights on computer programs and data bases* specifying in details the types of operations the user of the program is permitted to perform. The free copying of computer programs for personal use is explicitly prohibited. Sanctions under the form of fines are envisaged for illegal possession, reproduction, distribution or use of computer programs and seizure of the subject of the violation is also provided.

The Law also contains provisions on the use of works subject to either copyrights (works of literature, art, and science) or related rights (records and movies) by providing access to them through wireless means, cable or other technology, for unlimited number of persons, allowing this access to be obtained from a place and in a time, individually chosen by each of them. Such use requires a prior permission by the author, the performer or the producer and imposition of fines is provided for violation of this requirement.

VIII.6. Computer Crimes

The Criminal Code regulates the criminal offences and the penalties imposed for their commitment. However special rules concerning computer crimes are not envisaged. A part of the existing provisions could be applied to some of the offences usually committed in cyber space such as unlawful disclosure of information, pornography, fraud, etc. Nevertheless the introduction of modern legal framework related to computer crimes is desperately needed. In July 2001 a Draft Law on amendments to the Criminal Code was submitted to the National Assembly, containing mainly provisions on computer related crimes. The Draft introduces *new criminal offences* such as unlawful access to computer resources, unauthorized copying or use of computer data, unauthorized damaging or deleting of computer programs, entering of computer viruses within a computer or information network, dissemination of computer or system passwords followed by the disclosure of personal data or state secret, etc. The Draft also provides *definitions of some computer crimes related terms*

³³ After the entry into force of the last amendments to the Law on Telecommunications on February 5, 2002, the State Telecommunications Commission is to be replaced by the newly established Commission on Communications Regulation.

such as computer, computer resources, information network, computer virus, computer program, computer data, etc.