

### The continuing evolution and advancement of digital communications around the world has created significant business opportunities and advantages across borders.

New digital communications' development includes new forms of communications network management, such as software emulation or software-defined networks (e.g. SD-WAN), and new forms of communications services, such as machine-to-machine services (e.g. Internet of Things – IoT), Voice over IP (e.g. VoIP), messaging apps (e.g. Over-the-Top Services – OTT) and web-based collaboration tools.

In response to such evolution and advancement, the EU has recast the regulatory framework for electronic communications applicable throughout the European Economic Area (EEA) and adopted a new [EU Electronic Communications Code](#) (the Code), which is scheduled to enter into force on 20 December 2020.

The Code introduces a new definition of regulated electronic communications, which looks at the use of these new forms of digital networks and services, rather than purely on technical parameters. As result, networks and services that are not currently regulated in the EEA might become subject to new regulatory compliance requirements under the Code. Despite the UK's exit from the EU, the UK government has pledged to apply the Code in the UK too.

Non-compliance could give rise to serious consequences, including regulatory investigations, fines and in case of repeated and serious infringements a ban from continuing the business in the EEA or parts of it.

These new regulatory compliance requirements may include, amongst other things:

- Changes to existing terms of service
- Additional security obligations
- Additional interoperability obligations
- Need for a notification to the national regulatory authorities of the EEA Member States where the network or service is available to customers
- Privacy obligations

The Code attaches different regulatory treatment to different categories of regulated networks and services: for example, private networks are subject to lighter regulation than public networks, and number-independent services are subject to lighter regulation than number-dependent services (i.e. services allowing a dial-in or dial-out functionality with national or international numbers). Moreover, communications services that are purely ancillary to non-communications services (e.g. gaming apps) are excluded from the application of the Code. However, the EU is contemplating the adoption of separate and new e-privacy regulation that, if adopted, would also apply to such ancillary communications services.

The extent to which the regulation will apply to new forms of digital communication, as well as the actual obligations applicable to each network and service, will therefore depend on its legal characterization under the Code.

Squire Patton Boggs's global Communications Practice has extensive experience with assisting new digital communications providers to understand the potential compliance requirements applicable under the Code and help devise pragmatic compliance strategies. We have been following this new legislation closely throughout its adoption and implementation process, and we have been advising a wide range of clients around the world. If you would like to have a confidential conversation as to whether your business might fall within the scope of the Code, please feel free to contact the lawyers listed below or your usual Squire Patton Boggs contact.



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