

Obligations of real property owners, perpetual usufructuaries of real properties and real property administrators as regards provision of access to buildings to telecommunications undertakings

The obligations of real property owners, perpetual usufructuaries of real properties and real property administrators are laid down in the Law of 7 May 2010 on Supporting Development of Telecommunications Services and Networks, referred to as the Broadband Law or the Mega-Law. The objective of the Law is facilitate access to telecommunications infrastructure to network operators and, thereby, to users, which practically means ensuring the ability to provide services to end users. Under the Telecommunications Law, an end-user is defined as "an entity using a public telecommunications service to meet its own needs". The Law regulates:

- the provision of access to real estate
- access to a building or a place in the building where cables supplied to a given apartment in the building converge in order to ensure telecommunication service
- the provision of access to the duct system
- the provision of access to a telecommunications cable.

Pursuant to Art. 30 of the Mega-Law, a real property owner, a perpetual usufructuary of a real property or a real property administrator, who is not a telecommunications undertaking, is required to provide telecommunications operators with free-of-charge access to the real property or an interconnection point involving in particular:

1. ensuring the possibility to use the existing telecommunications connection or existing telecommunications network of the building if duplicating such infrastructure would be economically infeasible or technically impossible,

2. enabling the provision of the telecommunications connection to the very interconnection point,

3. enabling the construction of a telecommunications system within a building if:

- there is no telecommunications system in the building that is capable of providing broadband internet access with the speed of at least 30 Mb/s or
- the telecommunications system existing in the building that is capable of providing broadband internet access with the speed of at least 30 Mb/s is not available or does not meet the telecommunications undertaking's needs,

4. enabling the use of the interconnection point,

5. enabling restoration of a telecommunications connection or developing a telecommunications system which has been terminated, destroyed, damaged or which needs to be upgraded or reconstructed – in order to ensure a telecommunications service in the building.

The obligation to ensure access to the building does not depend on whether the building has been completed or if it is already being used.

The terms and conditions of the access are laid down in the agreement between a telecommunications undertaking and a real property owner, a perpetual usufructuary of real properties or a real property administrator, which should be concluded within 30 days of the telecommunications undertaking requesting the conclusion of the agreement. Upon gaining the access, the telecommunications undertaking will bear costs related to making the real property available, including

electricity costs and costs of renting the property's area to this end.

The legislator also stipulates that the telecommunications undertaking may request the real property owner, the perpetual usufructuary of real properties or the real property administrator to provide information on:

1. contact data of the owner of the telecommunications cable, the building's telecommunication system and the telecommunication connection,
2. entities using the interconnection point,
3. other telecommunications undertakings using the telecommunications cable, the building's telecommunication system and the telecommunication connection,
4. the property's number in the land and mortgage register,
5. persons or entities authorised to conclude the access agreement, including their addresses for service.

The property owner, the perpetual usufructuary of the real property or the real property administrator is required to provide relevant information to the telecommunications undertaking within 14 days of receiving a request to that effect.

The property owner, the perpetual usufructuary of the real property or the real property administrator may not refuse access to the property. In the event they do, they will become party to an administrative procedure initiated at the request of the telecommunications undertaking. In such a situation, an administrative decision will be issued that will define the terms and conditions for providing the access.

Beside the obligations of property owners listed above, the legislator also expects that the building should have a telecommunications system consistent with the applicable technical and construction regulations so as to enable provision of services by various suppliers. The regulation is aimed to get rid of technical obstacles during the building design or construction stage.

The overall conclusion is that the objective of the above legal solution is to support the development of telecommunications services and networks and, eventually, to enhance the competitiveness of telecommunications operators as much as possible so as to bring most benefits to end users.

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