



Communications for all in East Africa

EAC MODEL ICT REGULATORY FRAMEWORK

Prepared by EACO

July 2017

TABLE OF CONTENTS

- 1. Scope of the Framework**
- 2. Separation of Powers**
- 3. Establishment and functions of the National Regulatory Authorities**
- 4. Staff of the NRAs**
- 5. Financial and related provisions**
- 6. Licensing**
- 7. Interconnection and access to facilities**
- 8. Universal Service, access and prices**
- 9. Spectrum management**
- 10. Numbering**
- 11. Technical standards**
- 12. Enforcement**
- 13. Tariff Regulation**
- 14. Separation of Accounts**
- 15. Dispute Resolution**
- 16. Fair competition and equality of treatment**
- 17. Consumer rights and obligations**
- 18. E-Transactions**
- 19. Postal Services**
- 20. Cybersecurity**
- 21. Broadcasting**
- 22. SIM-Card Management**
- 23. E-waste Management**
- 24. Over the Top Technologies**
- 25. Disaster Management**
- 26. Sanctions**
- 27. Consultation with Stakeholders**
- 28. Miscellaneous**

PREAMBLE

This shall be the common regulatory framework for ICT networks and services in the East African Community (EAC).

1. SCOPE OF THE FRAMEWORK

This framework establishes a harmonised approach for the regulation of ICT services and networks. It lays down tasks for Member States and National Regulatory Authorities (NRAs) and establishes a set of procedures to ensure a harmonised application of the regulatory framework throughout the EAC.

2. SEPARATION OF POWERS

Member States should guarantee the separation of functions relating to policymakers, regulators and service providers in the communication sector and put in place laws that clearly define the responsibilities of each of the following players:

- (a) The Government;
- (b) NRAs;
- (c) Operators; and
- (d) Consumers.

3. ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL REGULATORY AUTHORITIES

(a) Establishment of the NRAs

Member States should provide for a law establishing NRAs with clear and precise mandate and powers.

(b) Independence of the NRAs

Member States should guarantee the regulatory, financial and administrative independence and autonomy of the NRAs with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the constitutional obligations of the member state. NRAs should be in possession of all the necessary

resources in terms of staffing, expertise and financial means for the performance of their tasks.

(c) Board Members and CEOs of NRAs

Member States should ensure that in the appointment of the NRAs Board Members and CEOs, the following principles are applied:

- (i) appointment on the basis of their competence and integrity;
- (ii) a consultative process in the selection of the NRAs Board Members and CEOs;
- (iii) members should have appropriate professional qualifications; and
- (iv) members should not be drawn from organizations from which legal separation from NRA is required such as licensees, members of parliament and Judicial Officers.

(d) Staff of NRAs

Staff of the NRAs, should be recruited in a competent manner and appointment on the basis of their competence and competitive manner.

The law establishing NRAs should also include governance issues such as vacation from office by the Board members and CEOs, meetings of the Board of NRAs, indemnity of members of NRAs and conflict of interest.

4. FINANCIAL AND RELATED PROVISIONS

Member States shall ensure that the law establishing NRAs provides sufficient power, independence and authority to the NRA for it to gather information and acquire the human and financial resources for it to impartially and transparently carry its functions.

In terms of funding, preference should be given to NRA self-funding. Issues to be covered in financial and related provisions should include: Funds of the NRA; annual accounts; audit and control and financial year.

5. LICENSING

The provisions relating to licensing should include:

- (a) Licence categories;
- (b) Procedure for licence applications;
- (c) Regulatory fees;
- (d) Obligations with respect to licences;
- (e) Suspension and revocation of licences;
- (f) Transfer of licence;
- (g) Modifications of licences;
- (h) Renewal of licences.

6. INTER-CONNECTION AND ACCESS TO FACILITIES

NRAs shall provide procedures on:

- (a) Interconnection arrangements;
- (b) Access to facilities;
- (c) Infrastructure Sharing.

7. UNIVERSAL SERVICE/ACCESS FUND

The provisions should include:

- (a) Set up of the Fund;
- (b) Management of the Fund;
- (c) Sources of the Fund;
- (d) Scope of use of the Fund;
- (e) Fund's annual returns and audit.

8. SPECTRUM MANAGEMENT

Member States shall:

- (a) Ensure the effective management of spectrum for electronic communication services in their Jurisdictions;
- (b) Require NRAs to allocate spectrum for electronic communications services in a transparent and non-discriminatory procedure;
- (c) Provide legal framework for retrieval of spectrum not used efficiently;
- (d) Promote the harmonisation of use of spectrum in the EAC;

- (e) Provide mechanism for asserting control satellites orbital slots in the region.
- (f) In assigning spectrum, comply with relevant international agreements, including the ITU Radio Regulations.

9. NUMBERING

Members States shall ensure that the laws establishing NRAs give them powers to:

- (a) control their assignments of all numbering resources;
- (b) manage the national numbering plans;
- (c) ensure adequate numbers and numbering ranges provided for all publicly available electronic communications services; and
- (d) establish transparent and non-discriminatory assigning procedures for national numbering resources.

10. TECHNICAL STANDARDS

Member States shall ensure the use of standards and/or specifications for:

- (a) the provision of services;
- (b) type approval of electronic communications equipment;
- (c) technical interfaces and all network functions to the extent necessary to ensure interoperability of services and to improve freedom of choice for users.

11. ENFORCEMENT

Member States need to ensure that enforcement measures taken by NRAs are in accordance with EACO Guidelines on enforcement which provide on the mandate, powers, areas, procedures and institutional arrangements on enforcement functions. This should include among other issues, the following:

- (a) Power to request information;
- (b) Entry, search and seizure of equipment;
- (c) Inspection;
- (d) Investigation;
- (e) Compliance hearing procedures;
- (f) Sanctions.

Regional enforcement areas such regional roaming, regional broadcasting, inter-state money orders and courier services and cross border frequency coordination need to be complied with so as to ensure availability and reliability of communication services in the region.

12. TARIFF REGULATION

Member States should ensure that licensees in their jurisdictions, set tariffs of ICT services that are non-discriminatory and cost oriented.

Tariffs need to be transparent so as to enable the end user to determine the description of the service, the details relating to the nature of the service, amounts and charges payable for such service.

13.SEPARATION OF ACCOUNTS

Member States should ensure that licensees in their jurisdictions, separate accounts for electronic communications networks or services so as to identify elements of cost and revenue related to their activities.

14.DISPUTE RESOLUTION

Member States to ensure that the ICT Law provides dispute resolution mechanism involving:

- (a) Consumers and Operator;
- (b) Operators and Operators; and
- (c) Operator and Regulator.

For disputes concerning:

- (a) Consumers and Operator; and
- (b) Operators and Operators.

NRA's to be first instance of hearing and appeals to courts.

In disputes concerning Operator(s) and a Regulator, disputes should be submitted to specialised courts with provision for appeals.

15.FAIR COMPETITION AND EQUALITY OF TREATMENT

Member States to enact legislation on competition issues in the ICT sector provisions should include:

- (a) The prohibition of acts of unfair competition;
- (b) The criteria of determining if a product or service is effectively competitive in a given geographical area;
- (c) Significant market power;
- (d) Equality of treatment.

16.CONSUMER RIGHTS AND OBLIGATIONS

Member States shall ensure that consumer rights in the communication sector are protected.

NRAs are required to protect ICT consumers in the following manner:

- (a) Ensure that consumers have access to ICT services;
- (b) Avail simple and inexpensive dispute resolution procedures for handling consumer complaints concerning ICT services;
- (c) Require ICT services providers to provide to consumers accurate information on ICT services;
- (d) Address the needs of specific social groups such as people with disabilities;
- (e) Require ICT services providers to take appropriate measures on consumers' data protection.

17. CYBER-SECURITY

Member States shall put in place a Legal Framework for safeguarding computer systems and ICTs including: Criminalization of offenses related thereto, investigation, collection and use of electronic evidence and related matters.

18.E-TRANSACTIONS

Member States shall ensure that there is a Regulatory Framework which provides for the following:

- (a) Electronic Contracting;

- (b) Validity of Electronic Documents;
- (c) Electronic Signatures and Certification;
- (d) Country Code Domain Name Administration;
- (e) National Payments Systems including Mobile Banking issues and interoperability of Payment Systems; and
- (f) Standards of Electronic Documentation.

19. POSTAL

Member State shall ensure that there is a Postal Regulatory Framework on:

- (a) Quality of Service of Postal Services;
- (b) Postal Security measures;
- (c) National addressing issues; and
- (d) Postal payments and e-postal services.

20. BROADCASTING

Member States shall put in place a legal framework on:

- (a) Digital Broadcasting;
- (b) Development of local content;
- (c) Intellectual property protection mechanisms of broadcasting content; and
- (d) Emerging multimedia services such as Mobile TV and Webcasting.

21. SIM-CARD MANAGEMENT

Member States shall put in place Regulatory Framework on:

- (a) SIM-Card registration, storage and retention of subscriber records; and
- (b) Confidentiality and disclosure of subscriber information

22. E-WASTE MANAGEMENT

Member States shall enact legislation on sustainable e-waste Management and adoption of Green ICTs best practices.

23. EMERGING TECHNOLOGIES and SERVICES

NRAs shall take proactive measures to create a conducive regulatory environment that accommodates emerging services.

24. DISASTER MANAGEMENT

Member States shall:

- (a) Ensure availability of electronic communication facilities for prediction, monitoring and early warning mechanisms on disasters;
- (b) Put in place measures to access emergency communications services during disasters; and
- (c) Take appropriate measures for recovering communication networks and services from natural disasters.

25. SANCTIONS

Ensure that the ICT Law provides the NRAs with a wide range of sanctions for breach of the law and licence conditions including:

- (a) Fines;
- (b) Suspension;
- (c) Revocation of licence; and
- (d) Compensation.

26. CONSULTATION OF STAKEHOLDERS

Member States shall consult stakeholders with regard to changes in the legal framework in the ICT sector.

27. MISCELLANEOUS

Member States shall put in place a legal framework on:

- (a) Manner in which civil works should be carried out so as not to interfere with ICT infrastructure;
- (b) Repair of ICT infrastructure and restoration of ICT services;
- (c) Procedure for Right of way;
- (d) Access to lands for inspection and maintenance of ICT infrastructure;
- (e) Installation of ICT facilities on private land and buildings.