

## **Administrative Order No 33/2016, Official Gazette No 11/2016 of 15 June 2016**

### **Extra-territorial use of foreign International Mobile Subscriber Identities (IMSI) in the Federal Republic of Germany for machine-to-machine (M2M) communications**

#### **1. Legal basis**

This Administrative Order lays down in accordance with section 66(1) first sentence of the Telecommunications Act (TKG) of 22 June 2004 (Federal Law Gazette I page 1190), as last amended by Article 17 of the Act of 19 February 2016 (Federal Law Gazette I page 254), the conditions under which foreign International Mobile Subscriber Identities (IMSI) may be used in the Federal Republic of Germany for machine-to-machine (M2M) communications.

#### **2. Definitions**

For the purposes of this Administrative Order

1. "foreign IMSI" means a number according to Recommendation ITU-T E.212 of the International Telecommunication Union (ITU) which begins with a mobile country code (MCC) that has been assigned by the ITU to a geographical area or a group of countries and is not identical to the MCC 262 assigned to the Federal Republic of Germany;
2. "extra-territorial use" means the use of foreign IMSIs in the Federal Republic of Germany on a permanent basis. Permanent use can take place by way of permanent activation of the IMSIs in a telecommunications network in Germany or by way of international roaming (permanent roaming). The use of foreign IMSIs during travel (temporary roaming) is not considered as extra-territorial use of IMSIs;
3. "M2M communications" means the predominantly automated exchange of information between technical devices such as machines, vending machines, vehicles or measuring equipment (eg. electricity, gas and water meters) or between the devices and a central data processing unit (see Communication No 139/2011, Official Gazette No 5/2011, page 893). Communications can be either wire-based or wireless. A human is not usually involved in the communications, although limited human involvement does not preclude classification as M2M communications.

If limited human involvement is part of a service, this does not preclude classification as M2M communications for the purposes of the numbering plan at least in the following cases:

- activation/operation/control/monitoring of an M2M application or an M2M device using technical equipment such as a computer, smartphone, tablet, etc. by a human in either a private (eg. smart home) or an industrial environment;
- activation of an application that enables individual communication in the sense of a preselected point-to-point communication but not a call to a freely selectable number. Examples of this are eCalls in vehicles, private emergency calls in lifts and/or vehicles, and concierge services in vehicles.

This list is not exhaustive and is without prejudice to an assessment of new business models.

*Note: The Bundesnetzagentur will in due course publish a list of other services with human involvement that are classified as M2M communications for the purposes of the numbering plan.*

### **3. Admissibility of extra-territorial use**

By way of derogation from the principle of the inadmissibility of the extra-territorial use of numbers, the extra-territorial use of foreign IMSIs in the Federal Republic of Germany for M2M communications is permitted.

The Bundesnetzagentur may revoke the admissibility of the extra-territorial use of foreign numbers in the Federal Republic of Germany for M2M communications as well in individual cases, for specific business models or generally if it finds that through the extra-territorial use there is

- a) detriment to public interests (eg. public safety), or
- b) detriment to rights of third parties (eg. competition, consumer protection).

Upon revocation it will determine whether and if so the time frame in which existing applications are to cease.

*Note 1: This is without prejudice to the notification requirement laid down in section 6 of the Telecommunications Act. A foreign service provider that has not yet submitted notification in Germany under section 6 of the Act is not required to notify the Bundesnetzagentur of the extra-territorial use of IMSIs in Germany. If the conditions in section 6 of the Act are met, a foreign provider is, however, required to notify the Bundesnetzagentur accordingly without delay. Non-compliance with this requirement is liable to a fine (see section 149 para 2 of the Telecommunications Act).*

*Note 2: The use of foreign IMSIs in the Federal Republic of Germany as allowed by the Bundesnetzagentur implies nothing about the legality of the use of these numbers in the Federal Republic Germany under foreign law. The assignment holder and/or the user of the number must at their own responsibility clarify the legal framework for the extra-territorial use of foreign IMSIs in that foreign country and obtain any permission required for such use. Thus the secondary assignment holder and/or the number user is/are responsible for the admissibility under the applicable foreign law of the extra-territorial number use initiated by the holder and/or user. The holder of the IMSI block assignment should draw the contractual partner's attention to these facts.*

*Note 3: Admissibility of the use of IMSIs with the German MCC 262 for M2M communications outside the Federal Republic of Germany is regulated in Administrative Order No 32/2016 (Official Gazette No 11/2016 of 15 June 2016).*

### **4. Entry into force**

This Administrative Order enters into force on 16 June 2016.

#### **Rights of appeal**

An appeal against this Administrative Order may be lodged within one month of its issue. The appeal must be filed in writing with the Bundesnetzagentur, Tulpenfeld 4, 53113 Bonn or any other Bundesnetzagentur office, or placed on record.

The requirement of written form is met if electronic media are used. In this case, an electronic PDF or PDF/A document must be signed with a qualified electronic signature as defined in the Electronic Signatures Act (SigG). The other conditions applicable to electronic communications with the Bundesnetzagentur can be found on the Bundesnetzagentur's website at [www.bundesnetzagentur.de](http://www.bundesnetzagentur.de) – Die Bundesnetzagentur > Über die Agentur > Elektronische Kommunikation.

Under section 137(1) of the Telecommunications Act an appeal does not have suspensory effect. Filing an appeal does not change the effect or enforceability of the notice in any way.