



## ANACOM CONSULTATION PROCEDURES

### Determination of 12.2.2004<sup>1</sup>

#### 1. Introduction

Article 6 of Directive 2002/21/EC, of the European Parliament and the Council, of 7 March 2002, regarding a common regulatory framework for electronic communications networks and services, establishes a consultation and transparency mechanism to be followed by the national regulatory authorities in the adoption of measures that have a significant impact in the relevant market.

Law no. 5/2004, of 10 February, which, transposing directives from Revision 99, approves the electronic communications legal regime (Electronic Communications Law), establishes in its article 8 the general consultation procedure to be observed by ANACOM within the new regulatory framework.

In accordance with this procedure, ANACOM must give the interested parties, in a deadline to be established for that purpose which shall not be lower than 20 working days, the possibility for them to give their opinion about draft measures to be adopted in the exercise of their duties foreseen in the Law having a significant impact in the relevant market.

Pursuant to Law no. 5/2004, of 10 February, ANACOM must publicise the adopted consultation procedures, being this one the object of this document.

#### 2. Other consultation procedures

The Portuguese public administration follows opened and transparency principles, which are foreseen in the constitution (see article 268, no. 1 of the Portuguese Republic Constitution) and put into practice in the Administrative Procedural Code (CPA) – general law applicable to the whole administrative activity.

Therefore, ANACOM follows already, during the exercise of its activity, some of the typical consultation principles established in the national legislation, which will continue to be followed without prejudice of its articulation with the general consultation principle foreseen in the Electronic Communications Law.

##### a) Previous hearing of the interested parties

Pursuant to the CPA, the Public Administration bodies will have to ensure the participation of the interested parties in the decision-making process whenever those decisions are of interest to them.

Interested parties are, thus, the holders of subjective rights or legally protected interests within the scope of the decisions that will be or may be made in the administrative procedure. Thus, ANACOM previously hears the interested parties on any draft decision before taking any final decision.

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<sup>1</sup> Does not replace consultation of the information available at ANACOM's website.

In any case, ANACOM decides if the audience is written or oral, and, should it decide to put it in writing, it notifies the interested parties for them to give their opinion establishing a deadline which cannot be lower than 10 working days (articles 100 and 101 of CPA).

At the end of the audience and before adopting any final decision, ANACOM prepares the respective report with the views put forward by all interested parties as well as the authority's understanding about the same.

Whenever the audience is oral, the respective minutes is drawn containing an extract of all allegations made by the interested parties, the latter being entitled to attach any written allegations (article 102, no. 2 of CPA).

### **b) Regulatory procedure**

The procedure that ANACOM must follow in the exercise of its regulatory procedure is described in the CPA and in the Statutes of this Authority, approved by Decree-Law no. 309/2001, of 7 December (article 11).

In order to comply with the principle of participation contained in its regulations, ANACOM discloses the draft regulation in its website, disclosing the same as well as its justifying note to the tutelage minister and to the entities that, in each case, ANACOM identifies as being interested therein.

All these entities as well as any interested party have a deadline of 30 working days to submit any comment or suggestion.

Once the consultation is finished, a preamble report of the regulation is prepared providing the reasoning of the decisions made with the necessary reference to the criticisms and suggestions made to the draft by the entities to whom a notice thereof was sent. This report must also refer to the disclosure of the draft in the *website* in order to be widely known by all interested parties.

The entities that were previously informed about the draft may have access to all suggestions made to the draft regulation, upon request to ANACOM.

### **c) Public consultations**

ANACOM has also the duty of promoting [see article 6, no. 1, subsection m) of the Statutes], public consultations and manifestations of interest about several issues, namely as to the introduction of new services or technologies or whenever they deem that it is of interest. In each consultation procedure it is the responsibility of ANACOM to fix the respective rules, including the deadline to reply.

### 3. General consultation procedure pursuant to article 8 of the Electronic Communications Law

#### a) Measures object of the procedure

ANACOM should promote the general consultation procedure whenever they wish to adopt measures with a significant impact in the relevant market.

The Electronic Communications Law identifies, in some cases, the measures which adoption compulsorily requires the use of the general consultation procedure, which are as follows:

- Change of the conditions, rights and procedures applicable to the exercise of the activity (article 20, no. 2);
- Limitation of the number of rights to use frequencies [article 31, no. 3, subsection a)];
- Allocation of rights to use numbers with an exceptional economic value through competing or comparative selection procedures (article 33, no. 4);
- Definition of quality of service parameters (article 40, no.2);
- Release of the obligation to offer additional resources (article 53, no. 2);
- Definition of the necessary rules to perform portability (article 54, no. 5);
- Definition of the relevant markets of products and services, determination of a relevant market as effectively competing or not, declaration of the companies with significant market power in the relevant markets and imposition, maintenance, change or elimination of obligations to the companies with or without significant market power (article 56 and 57, paragraph 1);
- Definition of the necessary rules to execute selection or pre-selection (article 84, no. 4);
- Definition of the obligations pertaining to the universal service providers applicable to the offer of public telephones (article 90, no. 1);
- Definition of the terms and conditions of the specific offers for people with disability (article 91, no. 3);
- Fixation of the performance objectives applicable to the several universal service obligations (article 92, no. 5).

In all other cases, the qualification will have to be made randomly by the regulator – that is, it is the responsibility of ANACOM to decide case by case if the general consultation procedure should be followed, which requires of course integration of the concept of significant impact in the relevant market regarding the specific situation.

The Law exempts from the general consultation procedure all urgent measures, that is, whenever it is required an urgent action to safeguard competition or protect the interests of users. These measures can only be adopted under exceptional circumstances and should be immediate, proportional and provisional.

#### b) Interested parties

In the general consultation procedure, the meaning of interested parties differs from the one contained in the CPA, used for purposes of previous hearing. It is actually a more comprehensive

concept, whereby any interest regarding the measure to be adopted may be at stake, not requiring the existence of a subjective right or interest legally protected within the decisions that will be or may be taken in the administrative procedure.

Thus, the draft measure is made available in the website of ANACOM, whereby any person or entity is entitled to give an opinion or to make comments or suggestions thereto.

### **c) Deadline**

A deadline for the reception of the replies is established in each consultation procedure, which cannot be lower than 20 working days.

It is the responsibility of the regulator to define, for each case, the duration of the consultation, taking into account several factors, namely:

- urgency of the matter in question;
- complexity of the subjects contained in the consultation;
- existence of former consultations about the same matter or related to the same;
- amount of replies expected for each consultation;
- compatibleness with other legally fixed deadlines.

### **d) Availability of the draft measure and submittal of replies to consultation.**

ANACOM makes available the draft measure in its website.

If deemed convenient, the draft decision may enclose specific questions.

Responses, comments and suggestion can be sent to ANACOM by any means – letter, fax, e-mail – provided that they are in writing. ANACOM may indicate a preference for responses to be sent by email.

A specific point of contact, to which responses can be sent, is given for each consultation.

As a rule ANACOM publishes the responses received on its website, safeguarding any information that is of a confidential nature; where information is considered confidential, this should be clearly indicated by the sender.

Finally ANACOM analyses all responses and publishes a final document containing a reference to all the responses received and an overall assessment which sets out the Authority's position with regard to such responses.

## **4. Articulation of the general consultation procedure with other consultation procedures**

The general consultation procedure may be held simultaneously with the above-mentioned consultation procedures, namely with the previous hearing procedure of the interested parties.

Thus, whenever a draft measure is subject to both procedures, the parties deemed interested for purposes of previous hearing shall be notified in accordance with CPA, complying with all the formalities contained therein.

The draft measure submitted to the general consultation procedure and simultaneously to the previous hearing of the interested parties is of course disclosed in the *website* of ANACOM. In these cases, the regulator may match the deadline of the previous hearing with the deadline of the general consultation procedure, although it is not compulsory that it occurs.

Moreover, the regulatory procedure can coincide with the general consultation procedure, all the rules associated to it being as well complied with. In this case, there is also an advantage to match the deadlines.

The general consultation procedure is different from the requests for an opinion to several entities, as it is the case of the Competition Authority, the Institute for the Consumer or sector regulators, foreseen in the Electronic Communications Law in typified cases.

The general consultation procedure should not be mistaken with the specific consultation procedure established in article 57 of the Electronic Communications Law, which transposes article 7 of Directive 2002/21/EC. When the latter must take place, it is added to the first one and has as addressees the European Commission and the national regulatory authorities of the other Member States.

Notices, deadlines and consultations foreseen in the above-mentioned article 7 were considered in Recommendation 2003/561/EC of the Commission, of 23 July 2003 and are not included in the scope of this document.

Regardless of the realization of the consultation procedures, ANACOM may, before adopting any decision, promote discussions about the matter in question with entities that may be affected by the measure or with entities that represent its interests.



## PROCEDURES FOR THE BEGINNING OF THE PROVISION OF ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

### Determination of 3.5.2004<sup>1</sup>

#### Introduction

Law no. 5/2004, of 10 February, establishes the legal regime applicable to electronic communications networks and services.

The provision of electronic communications networks or services is subject to the regime of general authorization, which consists in the compliance with the rules provided for in Law no. 5/2004, of 10 February and in regulations approved by ICP – Autoridade Nacional de Comunicações (ICP-ANACOM) in implementation thereof, not depending on any prior decision or act of the regulator, without prejudice to the limitations which result from the allocation of rights of use of frequencies and numbers.

Under the law, undertakings that wish to provide electronic communications networks and services are bound to submit previously to ICP-ANACOM a short description of the network or service they wish to initiate and to notify an estimated date for starting the activity, without prejudice to other particulars required by the regulator. The provision of electronic communications networks or services, whether publicly available or not, may also involve the allocation of rights of use of frequencies and numbers.

The National Frequency Allocation Plan (NFAP) shall specify the cases in which the rights of use are required, as well as the allocation procedure, which may consist of a competitive or comparative selection procedure, namely an auction or competition.

The rights of use for frequencies may be granted to providers of electronic communication networks or services or to entities that use those networks or services, namely to providers of radio or television broadcast content services, pursuant to applicable law.

As the use of frequencies is not subject to the allocation of rights of use, the principle of full accessibility is in force.

The use of numbers of the National Numbering Plan (NNP) for the provision of electronic communications networks or services depends on the allocation of individual rights of use.

The rights of use for numbers may be allocated both to providers of electronic communication networks or services and to entities that use those networks or services.

#### Scope of application

The present procedures are aimed exclusively at entities that wish to initiate the provision of electronic communications networks or services after the entry into force of Law no. 5/2004, of 10 February, and likewise, with the necessary adjustments, to requests presented under the previous legal framework which are still pending.

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<sup>1</sup> Does not replace consultation of the information available at ANACOM's website.



## **1. Particulars to be attached to the notification concerning the beginning of provision of electronic communications networks or services under a general authorization**

### **1.1. Publicly available networks and services**

Legal persons that wish to provide publicly available electronic communications networks and services shall submit the following particulars to ICP-ANACOM:

- a) As regards registered legal persons, a certificate of the registration contents and enrolments in force, issued by the competent Trade Register Office, must be submitted, and, in the case of commercial companies, the respective object of the company must include the provision of electronic communications networks or services;
- b) As regards legal persons with pending commercial register, certified copies of the legal person card and of the public document of the respective setting up must be submitted.

#### **1.1.1 Provision of electronic communications networks**

Entities that wish to provide publicly available electronic communications networks shall submit the following particulars in addition to those pointed out in the preceding paragraph:

- i) Type(s) of network(s) those entities wish to establish, operate, control or make available;
- ii) Description of the nature, characteristics and functioning of the network(s), including the following information:
  - Purpose of the network: establishment, operation, control or provision (namely, if the network aims solely at supporting services provided by the undertaking itself to end-users or if it aims also at the provision to other operators/providers for the establishment of network or support of their services);
  - Geographic coverage scope;
  - Technology to be used;
  - Short description of the network architecture and diagram that facilitates the description;
  - Short description of the plans concerning the information system and network management;
  - Short description of the measures to be adopted in order to ensure the network security;
  - Indication whether the network is owned or belongs to another entity, fully or in part;
  - Indication whether the network installation requires the occupation of public domain or of private property;
  - Indication whether the network provision involves the use of radio spectrum;
  - Indication whether the network provision involves the use of numbering facilities;
  - Indication whether the network supports the provision of radio and television broadcasting services.
- iii) Indication of the date set for the beginning of the network provision. In case the purpose of the network is to support services to be made available to the end-user by the undertaking itself or to provide such services to other operators/ providers for the establishment of the network or the

- support of their services, the date for the beginning of each of these activities must be discriminated, where such activities do not commence at the same time;

- iv) Indication of the address of the entity and of the contact person for the purpose of notifications and other communications to be carried out by ICP-ANACOM, as well as of the responsible person in situations of disaster or within the scope of the National Emergency Plan;

- v) Indication of the shareholding composition at 1st and 2nd level.

### **1.1.2 Provision of electronic communications services**

- Entities that wish to provide publicly available electronic communications services shall submit the following particulars:

- i) Indication of the service(s) the provision of which they wish to initiate, including the description of the respective nature, characteristics and functioning, referring whether they concern retail or wholesale services and the respective geographical scope;

- ii) Diagram that facilitates the description of the service(s), including the indication of the technology (technologies) to be used;

- iii) Indication, for each service to be made available, whether it is to be supported, fully or in part, over an owned network or a network belonging to another entity;

- iv) Indication of the date set for the beginning of the provision of service(s);

- v) Indication whether the service provision involves the use of radio spectrum;

- vi) Indication whether the service provision involves the use of numbering facilities, in which case the correspondent request must be submitted, attaching the particulars provided for in point b) of paragraph 4;

- vii) Indication of the address of the entity and of the contact person for the purpose of notifications and other communications to be carried out by ICP-ANACOM, as well as of the responsible person in situations of disaster or within the scope of the National Emergency Plan;

- viii) Indication of the shareholding composition at 1st and 2nd level.

### **1.2 Non-public networks or services**

- Natural or legal persons that wish to provide non-public electronic communications networks and services shall submit the following particulars to ICP-ANACOM:

- a) As regards legal persons, the particulars referred to in paragraph 3 must be submitted;

- b) As regards natural persons, a simple copy of the identity card and of the taxpayer identification card must be submitted;

- c) Particulars provided for in paragraphs 1.1.1 and/or 1.1.2, whether electronic communications networks or services are to be provided;

- d) Indication of the date set for the beginning of the provision of the network(s) and/or the service(s).

**1.2.1** The notification regarding the beginning of the provision of electronic communications networks or services is deemed accomplished following the submission of the request for a radio license made to ICP-ANACOM, pursuant to Decree-Law no. 151-A/2000, of 20 July.

**1.2.2** Entities that use the spectrum for the provision of non-public electronic communications networks or services in frequency bands exempt from radio licensing and under the conditions established in the notice of ICP-ANACOM, published for the implementation of Decree-Law no. 151-A/2000, of 20 July and available at its website, are exempted from requesting frequency allocation, but must submit the notification concerning the beginning of provision of electronic communications networks or services.

### **1.3 Manner of presentation of the notification**

Interested parties in the provision of electronic communications networks or services, publicly available or non-public, shall fill in the model in annex to the present document and send it by post to the headquarters of ICP-ANACOM, at *Avenida José Malhoa*, no. 12, 1099-017 Lisbon.

The notification model may also be electronically filled in and sent to the email address [info@anacom.pt](mailto:info@anacom.pt). The electronic submission of documents does not exempt from the submission of a paper copy, which must take place at the most 48 hours from the date of the email sending.

Interested parties must obtain evidence of the notification, via any legal means of acknowledgement of receipt, namely postal or electronic.

## **2. Declaration to be issued by ICP-ANACOM**

Within 5 working days from the receipt of the notification regarding the beginning of the provision, ICP-ANACOM shall issue the declaration provided for in paragraph 5 of article 21 of Law no. 5/2004, of 10 February, in order to confirm the submission of the notification stating the wish to provide electronic communications networks and services, and to describe the rights in matters of access and interconnection and of instalment of facilities.

In case the submission of the documents paper copies does not take place within 48 hours following the email sending, the period for the issue of the declaration is calculated as from the date of the effective reception of the documents at the headquarters of ICP-ANACOM.

The declarations shall only be issued by ICP-ANACOM following the reception of all particulars referred to in the preceding paragraphs.

## **3. Particulars to be attached to the requests for allocation of rights of use for frequencies**

Entities that wish to provide electronic communications networks and services, which involve the allocation of rights of use for frequencies, according to the National Frequency Allocation Plan (NFAP), shall submit a request attaching the following particulars thereto:

a) Notifications submitted to ANACOM, as provided for in paragraphs 1., 1.1.1 and/or 1.1.2;

b) Technical project of the radiocommunications network, comprising the features of the technological system, the system development planning and the subsequent coverage plan, the system management and operation and the quality levels of the service to be provided.

#### **4. Particulars to be attached to the requests for allocation of rights of use for numbers**

Undertakings that wish to be allocated rights of use for numbers for the provision of electronic communications networks or services shall attach the following particulars to their requests:

- a) Notifications submitted to ANACOM, as provided for in paragraphs 1., 1.1.1 and/or 1.1.2;
- b) Clear indication of the purpose of the requested numbering.

#### **5. Language of the documents**

Both the notification concerning the wish to provide electronic communications networks and services and the requests for allocation of rights of use for frequencies and numbers must be written in Portuguese.

Documents submitted in a foreign language must be attached to the respective translation.

#### **6. Foreign companies**

Commercial companies that do not have their effective headquarters in Portugal, but wish to provide electronic communications networks or services in the country, either publicly available or non-public, over longer than one year, must establish a permanent representation and comply with the provisions in the Portuguese Law as regards commercial register, pursuant to article 4 of the Code of Commercial Companies.

In the case above, companies must attach a certificate of the permanent representation register, made at the competent Trade Register Office, to the notification concerning the beginning of the provision of electronic communications networks or services or to the requests for allocation of rights of use for frequencies and numbers.

#### **7. Undertaking register**

It is incumbent upon ICP-ANACOM to register entities providing electronic communications networks and services, as well as to keep record of all particulars concerning their identification, nature and type of networks or services provided, making available such information at its website.

