



EUROPEAN COMMISSION

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Autoridade Nacional de
Comunicações (ANACOM)

Avenida José Malhoa No. 12
1099-017 Lisboa
Portugal

For the attention of:
Mr. João Cadete de Matos
Chairperson

**Subject: Case PT/2021/2294: Weighted Average Cost of Capital of MEO
(2020) in Portugal**

**Commission Comments pursuant to Article 32(3) of Directive (EU)
2018/1972**

Dear Mr Cadete de Matos,

1. PROCEDURE

On 20 January 2021, the Commission registered a notification from the Portuguese national regulatory authority, Autoridade Nacional de Comunicações (ANACOM)¹, concerning the weighted average cost of capital (WACC) for Serviços de Comunicações e Multimédia, S.A. (MEO) for 2020 in Portugal.

The national consultation² ran from 26 October 2020 to 23 November 2020.

¹ Under Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the Code) (OJ L 321, 17.12.2018, p. 36).

² In accordance with Article 23 of the Code.

The Commission sent a request for information³ to ANACOM on 27 January, and received a reply on 1 February 2021.

Under Article 32(3) of the Code, NRAs, the Body of European Regulators for Electronic Communications (BEREC) and the Commission may make comments on notified draft measures to the NRA concerned.

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

The WACC methodology previously used by ANACOM was notified to and assessed by the Commission under case PT/2016/1900⁴. The Commission had no comments to the notified method. However, under case PT/2018/2101⁵, concerning wholesale voice call termination on individual public telephone networks provided at a fixed location in Portugal, the Commission noted that the WACC value used in the cost model had not been previously notified to the Commission. The Commission commented on the need to notify all WACC updates regardless of whether the new WACC values resulted from a methodological change or simply an update of the data used in the calculation.

ANACOM notified the updated WACC calculation for 2018 and 2019 under cases PT/2019/2159⁶ and PT/2019/2195⁷, respectively. In both cases the Commission had no comments.

In the last measure, ANACOM estimated the pre-tax nominal WACC of MEO for 2019 at 7.40%. The parameter values of the calculation are shown below.

Table 1: WACC of MEO in 2019

Risk-Free Rate	2.45%
Debt premium	1.608%
Equity beta	0.762
Equity Risk Premium	6.54%
Gearing	39.53%
Tax rate	22.50%
Post-tax Cost of equity	7.432%
Nominal pre-tax WACC	7.40%

³ In accordance with Article 20(2) of the Code.

⁴ C(2016) 5783

⁵ C(2018) 5876

⁶ C(2019) 3426

⁷ C(2019) 6914

2.2. Description of the notified measure

ANACOM computes MEO's WACC for 2020.⁸ In doing so, ANACOM aligns its WACC methodology to the one outlined in the 2019 Commission's Notice on the calculation of WACC (the "Notice")⁹. Further, ANACOM uses where relevant the WACC parameters set by BEREC in its 2020 Report on WACC parameter calculations according to the European Commission's WACC Notice of 7th November 2019 (the "2020 Report")¹⁰.

In its reply to the RFI, ANACOM explains that the SMP operator MEO will use the updated WACC rate in its regulatory accounting system when setting prices for products and services subject to price regulation, namely the wholesale offers for access to copper (bitstream access and local loop unbundling), leased lines, ducts and poles.¹¹

ANACOM already used the Capital Asset Pricing Model (CAPM) in its previous methodology used for the calculation of WACC in 2019. Also, ANACOM's previous calculation of parameters such as the risk-free rate and the debt premium was very similar to that of the Notice. Therefore, as ANACOM puts forward, the methodological changes currently notified following the application of the Notice are limited.

MEO's WACC for 2020 has been determined based on the parameters listed below.

Table 2: WACC of MEO in 2020

Risk-Free Rate	2.16%
Debt premium	1.30%
Equity beta	0.7921
Equity Risk Premium	5.31%
Gearing	36.9507%
Tax rate	31.1417%
Post-tax Cost of equity	6.3663%
Nominal pre-tax WACC	7.1077%

⁸ By decision of 17 April 2020, ANACOM decided to suspend the work on the definition of the rate of cost of capital for regulatory purposes to be considered in MEO's 2020 analytical accounting system, until there was more visibility on the results of the work of the European Commission and the Body of European Regulators for Electronic Communications.

⁹ Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector, OJ C 375/01, 6.11.2019.

¹⁰ BoR (20) 116

¹¹ In its reply to the RFI, ANACOM clarified when the prices were last set for the relevant regulated services provided by MEO (year in parenthesis): Copper bitstream access (2017), local loop unbundling (2010), traditional leased lines (2012), CAM and Inter-island leased lines (2019), ducts access (2006) and poles access (2010).

The revised WACC value is slightly lower than the currently applicable value. This reduction stems mainly from a decrease of the risk free rate and equity risk premium, reflecting the decrease of interest rates on State bonds as well as the usage of the common EU value for the equity risk premium. For the latter, ANACOM applies the value estimated by BEREC of 5.31% in the 2020 Report.

3. COMMENTS

The Commission has examined the notification and the additional information provided by the ANACOM and has the following comments:¹²

The Commission welcomes ANACOM's incorporation of the harmonised approach in relation to the calculation methodology for the cost of capital rate of legacy telecommunication infrastructures for regulatory purposes. Indeed ANACOM fully aligns its methodology with the Commission Notice and uses, where relevant, the parameters set by BEREC in 2020.

Nevertheless, the Commission notes that the prices of several regulated access products in Portugal have not been updated for quite some years. In particular, the prices of regulated access to ducts and poles date from 2006 and 2010 respectively, to copper local loop from 2010, and to leased lines from 2012.

The Commission recalls that timely market reviews are of utmost importance to ensure appropriate regulatory measures and market predictability. The Commission strongly encourages ANACOM to regularly review the markets and update the prices of such key access products and services without further delays.

Under Article 32(8) of the Code, ANACOM shall take utmost account of the comments of other NRAs, BEREC and the Commission and may adopt the resulting draft measure. Where it does so, the NRA shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take on other notified draft measures.

Pursuant to Point 15 of Recommendation 2008/850/EC¹³ the Commission will publish this document on its website. If ANACOM considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information that

¹² In accordance with Article 32(3) of the Code.

¹³ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

you wish to have deleted prior to publication, please inform the Commission¹⁴ within three working days of receipt¹⁵. Please give reasons for any such request.

Yours sincerely,

For the Commission
Roberto Viola
Director-General

¹⁴ By email: CNECT-markets-notifications@ec.europa.eu

¹⁵ The Commission may inform the public of the result of its assessment before the end of this three-day period.

Response to the Request for information pursuant to Article 20(2) of Directive (EU) 2018/1972 - Case PT/2021/2294

1. In the current notification, the WACC value is updated. Could you kindly indicate in this regard:

a. To which type of products the updated WACC applies (such as copper BSA, LLU, etc.);

The updated WACC rate will be used by the SMP operator's (MEO) regulatory accounting system and thus feed through all of MEO's products and services, namely the copper wholesale offers (bitstream access and local loop unbundling), leased lines offer (including CAM¹ and Inter-island² leased lines), ducts access offer and poles access offer, which are subject to price regulation.

b. When the prices for these types of products were last set, and when are they envisaged to be updated with the currently notified WACC value;

The current regulated prices of the abovementioned MEO's products and services were set on the following dates:

- Copper bitstream access: 2017
- Local loop unbundling: 2010
- Leased lines: 2012 (traditional leased lines), 2019 (CAM and Inter-island leased lines)
- Ducts access: 2006
- Poles access: 2010

Regulated prices are not automatically updated with a new WACC rate. However, in the context of market analysis, or when ANACOM promotes specific regulated

¹ Trunk segments of leased lines between the mainland and the islands of Azores and Madeira.

² Trunk segments of leased lines between the different Azores islands.

price reviews (e.g. the review of prices of CAM and Inter-island leased lines), the most recent available information, including the WACC rate, is considered.

As a guideline for ANACOM's foreseeable calendar regarding regulatory price updates, we expect to review during 2021 the prices of CAM and Inter-island leased lines and the prices of ducts access and poles access. ANACOM also plans to develop the review of the former markets 3a, 3b and 4 – in these market reviews the regulation of prices will also be assessed.



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

Connectivity
Markets

Brussels,
CNECT.B.3/ PK/SN/BM

Autoridade Nacional de
Comunicações (ANACOM)
Avenida José Malhoa No. 12
1099-017 Lisboa
Portugal

For the attention of:
Mr Pedro Ferreira

Subject: Case PT/2021/2294

Request for information pursuant to Article 20(2) of Directive (EU) 2018/1972¹

Dear Mr Ferreira,

On 20 January 2021, your notification of the above-mentioned draft measure was registered. This letter is a request for information, under Article 20(2) of the Code and Point 13 of Commission Recommendation 2008/850/EC.²

1. INFORMATION REQUIRED

The purpose of this request is to receive information that will allow the Commission to assess the notified draft measure in full knowledge of the relevant facts and the economic context.

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the Code) (OJ L 321, 17.12.2018, p. 36).

² Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC (Procedural Recommendation) (OJ L 301, 12.11.2008, p. 23).

We would appreciate if you could provide the information requested in the annex, below, as soon as possible, but no later than 1 February 2021.³

Please send your reply by email to CNECT-markets-notifications@ec.europa.eu.

2. CONFIDENTIAL INFORMATION

If you consider that your submission contains confidential information in accordance with Union and/or national law on business confidentiality, please explain the reasons for this in writing. The Commission will ensure such confidentiality⁴ in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001⁵.

Should you have any queries relating to the information requested, please do not hesitate to contact us.

Yours sincerely,

Kamila KLOC
Head of Unit

Enclosure: (1) Annex with information request

³ In accordance with Point 13 of the Procedural Recommendation, the reply to a request for information should be submitted within three working days.

⁴ See Article 20(3) of the Code.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001 p. 43.

ANNEX

REQUESTED INFORMATION

- 1) In the current notification, the WACC value is updated. Could you kindly indicate in this regard:**
 - a. To which type of products the updated WACC applies (such as copper BSA, LLU, etc.);
 - b. When the prices for these types of products were last set, and when are they envisaged to be updated with the currently notified WACC value.