



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/2022/2357 – Weighted Average Cost of Capital (2021) of MEO
in Portugal**

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

Dear Mr Cadete de Matos,

1. PROCEDURE

On 12 January 2022, the Commission registered a notification from the Portuguese national regulatory authority (NRA), Autoridade Nacional de Comunicações (ANACOM)¹, concerning the weighted average cost of capital (WACC) for MEO - Serviços de Comunicações e Multimédia, S.A. (MEO) for 2021 in Portugal.

The national consultation² ran from 25 October 2021 to 23 November 2021.

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 (RFI) to ANACOM on 24 January 2022, and received a reply on 27 January 2022.

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

ANACOM annually notifies the updated WACC calculation to the Commission as of 2019. ANACOM notified the updated WACC calculation for 2018 and 2019 under cases PT/2019/2159⁴ and PT/2019/2195⁵, respectively. In both cases the Commission had no comments.

The current WACC methodology used by ANACOM was notified to the Commission under case PT/2021/2294⁶, setting a WACC of 7.1%. The Commission had no comments to the methodology, since ANACOM followed the one outlined in the 2019 Commission's Notice on the calculation of WACC (the "Notice")⁷. Moreover, ANACOM used, where relevant, the WACC parameters set by BEREC in its 2020 Report on WACC parameter calculations⁸.

However, the Commission noted that the prices of several regulated access products in Portugal were due for an update, as the latest prices for regulated access to ducts and poles dated from 2006 and 2010 respectively, to copper local loop from 2010, to leased lines from 2012 and to copper bitstream access from 2017. The Commission recalled that timely market reviews are of utmost importance to ensure appropriate regulatory measures and market predictability. The Commission strongly encouraged ANACOM to regularly review the markets and update the prices of such key access products and services without further delays.

2.2. Description of the notified measure

ANACOM computes MEO's WACC for 2021 and follows the WACC methodology outlined in the Notice. Further, ANACOM uses where relevant the WACC parameters set by BEREC in its 2021 Report on WACC parameter calculations (the "2021 Report")⁹.

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

⁴ C(2019) 3426.

⁵ C(2019) 6914.

⁶ C(2021) 1246.

⁷ 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.

⁸ BoR (20) 116.

⁹ BoR (21) 86.

ANACOM maintains its current methodology and therefore the notified measure simply updates the WACC parameters to reflect those from the 2021 BERC Report. MEO's WACC for 2021 has been determined based on the parameters listed below.

Table 1: WACC of MEO in 2021

| | |
|-----------------------------|----------------|
| Risk-Free Rate | 1.71% |
| Debt premium | 1.1521% |
| Equity beta | 0.7479 |
| Equity Risk Premium | 5.5% |
| Gearing | 39.2157% |
| Tax rate | 31.14% |
| Post-tax Cost of equity | 5.8232% |
| Nominal pre-tax WACC | 6.2627% |

Compared to last year, the WACC implemented for MEO has dropped slightly less than one percentage point from the 2020 WACC estimated of 7.1%. While the WACC notified for 2021 in Portugal has decreased it remains above the average value observed in the EU. This is mainly due to the relatively higher risk free rate in Portugal.

In its reply to the RFI, ANACOM explains that it has started the work pertaining to the revision of access prices to ducts and poles (the reference offer to access to ducts, ORAC, and poles, ORAP). ANACOM expects to launch a public consultations of a draft decision on these issues during Q1 2022, and to notify the draft measures to the Commission in Q2 2022. ANACOM further plans to publish for consultation the draft decisions on the review of markets 1/2020, 2/2020 and 3b/2014, including price assessment, during the second half of 2022.

3. COMMENTS

The Commission has examined the notification and the additional information provided by ANACOM and has the following comment:¹⁰

3.1. Urgent need for timely review of markets and prices

The Commission notes, as it did in case PT/2021/2294, that the prices of several regulated access products in Portugal have not been updated for a long period of time (LLU, copper bitstream and leased lines). In particular, the prices of regulated access to ducts and poles date from 2006 and 2010 respectively. The notification to

¹⁰ In accordance with Article 32(3) of the Code.

the Commission of the review of market 2/2020 is also already due¹¹. The notification to the Commission of the review of markets 1/2020 and 3b/2014 will be due in March 2022¹².

The Commission takes good note of ANACOM's expected timeline to notify to the Commission the draft reference offers for ducts and poles, including prices, in Q2 2022, as well as to publish for consultation the draft decisions on the review of markets 1/2020, 2/2020 and 3b/2014, including a price assessment, during the second half of 2022.

The Commission strongly encourages ANACOM to respect the deadlines as set out in the Code to regularly review and notify to the Commission markets and corresponding regulated access prices. In that respect, the Commission expects ANACOM to follow its timeline as communicated in its reply to the request for information without any 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 6 of Recommendation 2021/554¹³ 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 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 faithfully,

For the Commission
Roberto Viola
Director-General

¹¹ Notified in 2016 under case PT/2016/1890, C(2016) 5063.

¹² Notified in 2016 under cases PT/2016/1888-89, C(2016) 7674.

¹³ Commission Recommendation (EU) 2021/554 of 30 March 2021 on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code OJ L 112, 31.3.2021, p. 5.

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.