

## **Regulation no. 987-A/2020, of 5 November**

### **Auction Regulation for the allocation of frequency usage rights**

#### **Clarifications**

Under the terms of paragraph 4 of article 11 of Regulation no. 987-A/2020, of 5 November, the content of the requests and clarifications provided are hereby disclosed, with the hiding of any information necessary, specifically, to ensure the confidentiality of the applicants' identities or potential bidding strategies.

#### **REQUEST I.**

##### **1. Article 11, paragraph 1, article 12, paragraph 4, and articles 49 and 50 of the Regulation**

1.1. In view of the above, taking into account the date the Regulation enters into force and the fact that the deadline for submitting applications must be calculated pursuant to the terms of article 87 of the Code of Administrative Procedure, it is asked whether the following calculation of the deadlines is correct for the purposes of this Regulation:

1.1.1. The regulation enters into force on 6 November 2020;

**Answer: Yes.**

1.1.2. The last day of the period for submitting applications is 27 November 2020, which is the 15<sup>th</sup> day after the start of the period for submitting applications, which started on 9 November;

**Answer: Yes.**

1.1.3. The last day of the period for requesting clarifications is 18 November 2020, which is the 8<sup>th</sup> day after the start of the period for submitting applications;

**Answer: Yes.**

##### **2. Article 11, paragraph 2 of the Regulation**

2.1. As requests for clarification can be delivered, electronically, to the address [leilao-esclarecimentos@anacom.pt](mailto:leilao-esclarecimentos@anacom.pt), without having to be submitted in physical form, it is

asked if it is correct to assume that they can be submitted until 23:59:59 on the 8<sup>th</sup> day after the start of the period for the submission of applications.

**Answer:** Yes.

- 2.2.** In view of the aforementioned request for clarification, it is asked whether, for the purposes of calculating the deadline for the publication of answers to requests for clarification, the Board of Directors of ANACOM also uses as a reference 23:59:59 on the 3<sup>rd</sup> day following receipt of the clarification request.

**Answer:** Yes.

**3. Article 11, paragraph 3 and article 12, paragraph 4 of the Regulation**

- 3.1.** Confirmation is requested that it is correct to assume that the deadline for the submission of the application will be officially extended by ANACOM if it is found that, in view of the clarifications provided and their implications for the content of the application to be submitted, it will be difficult to finish preparing and submitting it by the end of the period initially established for this purpose in an already difficult context, taking into account the constraints resulting from the current pandemic and the contingency measures approved.

**Answer:** The Regulation contains provisions that enable ANACOM's Board of Directors to make decisions that, at each moment, are most appropriate for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (see, in particular, article 4 of the Regulation).

**4. Article 10, paragraph 1, article 13, paragraph 1, sub-paragraph (d), and article 38, paragraphs 10 and 11 of the Regulation**

- 4.1.** In view of all the above, it is asked whether it is correct to understand that the applicant – in order to comply with the obligation to provide a guarantee deposit pursuant to article 10 and article 38, paragraphs 10 and 11 of the Regulation – may present several bank guarantees or insurance bonds issued by different institutions, provided that the requirements set out in paragraph 1 of article 10 and paragraph 10 of article 38 of the Regulation are respected in relation to the respective global values (that is, provided that the various bank guarantees or insurance bonds issued by different institutions add up, in total, to the amounts required by regulation).

**Answer:** The guarantee deposit referred to in article 10, paragraph 1 and article 13, paragraph 1, sub-paragraph (d) of the Regulation should not be confused with the deposit referred to in article 38 of this Regulation. In the former case, a “*guarantee of the binding commitment made with the submission of applications and obligations inherent to the entire auction procedure*” (article 10, paragraph 1 of the Regulation) is at stake, whereas the latter case, concerns a *new guarantee deposit*, intended to ensure the payment of the price of the frequency usage rights attributed to the winning bidders, if they intend to make use of the possibility of deferring payment of half the price, for a maximum period of 7 years, counting from the date of the act of attribution.

The doctrine cited only refers to the former situation and not to the latter, which does not involve general principles of public procurement, namely those of competition and expediting the procedure. For this reason, it is important to distinguish the two situations in the light of the public interest to be safeguarded, which is also distinct.

The guarantee deposit referred to in paragraphs 10 and 11 (mistakenly indicated in the question as being in paragraphs 11 and 12) of article 38 of the Regulation, is intended to guarantee the payment of 50% of the price of the frequency usage rights attributed to the winning bidders over a period of 7 years, and will be partially released each year by ANACOM, depending on the payments made, pursuant to paragraphs 4, 5, 6 and 9 of the Regulation, upon presentation of proof of making the deposit (see article 38, paragraph 11 of the Regulation).

Thus, this concerns a new guarantee deposit, which is intended to ensure the payment of the total value of the amounts whose payment has been deferred, so it is not technically or legally feasible to provide them through several partial guarantees, since each of them would always have to guarantee the payment of the entire amount due. The partial release mechanism referred to in paragraph 11 of article 38 of the Regulation would also be technically and legally incompatible with the provision of partial guarantees.

Accordingly, several bank guarantees or insurance bonds issued by different institutions may be presented, for the purposes of the provisions of article 10, paragraph 1, sub-paragraph (a), with a minimum value of 800,000 euros or multiples of this value. However, for the purposes of article 10, paragraph 1, sub-paragraph (b), only a single guarantee deposit of 15 million euros can be submitted, as this “guarantees the maximum number of eligibility points that can be used in both phases of bidding”.

With regard to article 38, paragraphs 10 and 11 of the Regulation, the presentation of several bank guarantees or insurance bonds issued by different institutions is not allowed.

- 4.2. If the understanding of the previous clarification request (4.1.) is confirmed, it is asked whether the text of the bank guarantee form provided in Annexes 2 and 3 of the Regulation can be changed, specifically the part relating to the guaranteed amount, without entailing the exclusion of the application.

**Answer:** In view of the previous answer, no changes to Annexes 2 and 3 of the Regulation are justified.

- 4.3. If the wording proposed in the previous request for clarification is unacceptable, please indicate wording that would be acceptable for that purpose.

**Answer:** The assessment of this question is rendered redundant by the answer given to the previous question.

- 4.4. Still regarding the subject of the guarantee deposit provided under article 10 of the Regulation, and as several credit institutions consulted to date to provide the guarantee deposit have expressed various doubts regarding the interpretation of the approved draft, confirmation is requested that it is acceptable, for reasons of greater clarity and interpretative certainty, to provide a bank guarantee form (respecting the model in Annex 2 of the Regulation) with the following final paragraph (highlighting the changes in bold): “This guarantee shall come into force on the date of its issuance and shall remain valid for a maximum period of 2 years, during which it can only be cancelled if ANACOM, through the Chairman of its Board of Directors, expressly authorises its release, and it may not be cancelled or amended without the consent of the Chairman of the Board of Directors of ANACOM” instead of the current final paragraph<sup>1</sup>.

**Answer:** The doubts of interpretation indicated are not considered to be justified, and the suggestion to change the text of the draft guarantee, with the indication that it “remains valid for a maximum period of 2 years”, could lead to the presentation of guarantees with a term of less than 2 years, and is therefore not acceptable, as it may

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<sup>1</sup> The current text of the aforementioned final paragraph is as follows: “This guarantee shall come into force on the date of its issuance and shall remain valid for a period of not less than 2 years and until such time as ANACOM, through the Chairman of its Board of Directors, expressly authorises its release. It may not be cancelled or amended without the consent of the Chairman of the Board of Directors of ANACOM”.

result in the exclusion of the application for violating paragraph 2 of article 10 of the Regulation.

## **5. Articles 12, paragraph 2 and 13, paragraph 1 of the Regulation**

- 5.1.** It is asked if it is correct to understand that the application must be delivered in an outer envelope which, under the terms of article 12, paragraph 2 of the Regulation, must be closed, must be addressed to the Chairman of the Board of Directors of ANACOM, and should not contain any elements that might allow the applicant to be identified.

**Answer:** Yes.

- 5.2.** It is asked if it is correct to understand that the application referred to in article 12, paragraph 1 of the Regulation should be included in this outer envelope, along with another envelope that, pursuant to the provisions of article 13, paragraph 1, must be closed and separate, and must contain all the documents to be filed with the application.

**Answer:** This is incorrect.

- 5.3.** If the interpretation indicated in the previous requests for clarification (5.1. and 5.2.) is incorrect, an indication of the correct interpretation is requested.

**Answer:** The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

- 5.4.** It is also asked whether, taking into account the content of article 13, paragraph 1 of the Regulation, it is correct to assume that the envelope containing the documents filed

with the application must contain the indication of the auction on its cover, and mention “Documents to be filed with the application”, and whether it must also indicate the applicant.

**Answer:** See the answer to the previous question.

- 5.5.** If the understanding indicated in the previous clarification request (5.4.) is incorrect, please indicate which information should appear on the cover of the inner envelope containing the documents filed with the application, in accordance with article 13, paragraph 1 of the Regulation.

**Answer:** See the answer to question 5.3.

## **6. Article 13 of the Regulation**

- 6.1.** Confirmation is requested that it is not necessary to attach any copies of the documents filed with the application, and that the submission of one set of documents is sufficient.

**Answer:** Yes.

## **7. Constraints arising from the holiday season and the end of the year**

- 7.1.** It is asked whether, taking into account the above, ANACOM intends to suspend the auction procedure during the Christmas and New Year period – as is the case, for example, with procedural deadlines (due to judicial holidays) – or, alternatively, to set a timetable for the aforementioned main bidding and assignment phases that does not coincide with this festive season.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

## **8. Pandemic situation, state of emergency and associated constraints**

- 8.1.** It is asked whether, taking into account the current state of emergency and the public health crisis – which seriously affect the daily lives of citizens and companies, as explained above – ANACOM intends to adopt measures that allow an adaptation of the regulatory rules, particularly, greater flexibility (in the form of extending deadlines, for example) of the auction time schedule.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

**8.2.** If the understanding set out in the previous question is correct, which measures have been approved or are being prepared for that purpose, and what is expected with regard to their implementation in the coming weeks and months?

**Answer:** See the answer to the previous question.

## **REQUEST II.**

### **1. Deadlines for submission of applications (paragraph 4 of article 12)**

Under the terms of paragraph 4 of article 12, taking into account the entry into force of the Auction Regulation (article 50), and the rules for calculating the deadlines determined by article 87 of the Code of Administrative Procedure, we understand that the last day on which applications will be accepted by ANACOM is 27 November 2020.

We would be grateful if you could confirm this understanding.

**Answer:** This understanding is correct.

### **2. Application filing process (paragraph 1 of article 13)**

Clarification is requested as to whether the envelope mentioned in paragraph 1 of article 13 should:

- also be addressed to the Chairman of the Board of Directors of ANACOM, and contain a reference to the auction application, with no other elements that could allow the applicant to be identified
- have another type of reference, or
- be totally blank, with no addressee, or any type of reference or identification of the applicant.

**Answer:** The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no

other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

### **3. Application filing process – list of bidders representing the applicant (sub-paragraph (f) of paragraph 1 of article 13)**

Sub-paragraph (f) of paragraph 1 of article 13 of the Auction Regulation determines that the applicant must designate up to six natural persons to bid in its name and on its behalf (“bidders”). The respective email addresses and contact telephone numbers should be indicated, as well as simple copies of the nominees’ identification documents.

Clarification is requested on whether the copies of the identification documents of the bidders, if they are foreigners, should be accompanied by a certified translation.

**Answer:** Under the terms of paragraph 6 of article 13, the documents to be filed with the application request shall be written in Portuguese or accompanied by a duly certified translation, in relation to which the applicant declares, for all due purposes, acceptance of its precedence over the respective originals.

### **4. Application filing process – information on holders of the applicant’s share capital (sub-paragraph [g] of paragraph 1 of article 13)**

Clarification is requested on whether the declaration regarding the owners of the applicant’s share capital, requested by sub-paragraph (g) of paragraph 1 of article 13 of the Auction Regulation, should be signed by the applicant’s legal representative(s), with sufficient powers to enter into binding commitments, recognised in this capacity under legally accepted terms.

**Answer:** It is not necessary for the signatures of the applicant’s legal representatives to be recognised for the purposes of this provision of the Regulation, in view of the fact that the applicants are bound by the declaration mentioned in sub-paragraph (a) of the same article, which is subject to this recognition.

## **5. Application filing process – information on the natural persons designated to present bids (sub-paragraph [h] of paragraph 1 of article 13)**

Sub-paragraph (h) of paragraph 1 of article 13 of the Auction Regulation determines that each natural person designated to bid in the name of and on behalf of the applicants, must sign a declaration in which they “*expressly authorise the recording of the content of telephone communications in the event of the need to use this means of communication as an alternative to the electronic platform on which the auction is held [...]*”.

Clarification is requested on whether the aforementioned declarations should have signatures recognised under legally accepted terms.

**Answer:** It is confirmed that the signatures do not need to be recognised.

## **6. Alternative means of bidding (articles 15 and 17)**

Does the alternative means of bidding provided for in sub-paragraph (b) of paragraph 5 of article 15, and in paragraphs 4 and 5 of article 17, which involves the use of telephone communication, envisage a single communication channel for each bidder, thereby avoiding situations when simultaneous traffic makes it impossible to communicate?

**Answer:** Under the terms of sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, bidders will receive, among other information, the conditions of use of the alternative means. The training activity to be held by ANACOM is specifically intended to convey the operational procedures related to its use, in the event of technical failure by the platform.

Bidders will be provided with a manual regarding the platform, which will be sent as an annex to the notification by ANACOM's Board of Directors provided for in article 15 of the Regulation.

## **7. Activity rule (article 18)**

As paragraph 6 of article 18 provides for a reduction in activity to that of the previous round, could this reduction discourage bidding by an applicant, irrespective of whether they are eligible to bid in accordance with the number of points attributed?

**Answer:** Regardless of the eligibility points that the bidder holds when the bidding phase starts, the number of eligibility points for that bidder is affected by its activity throughout the rounds and by the level of activity required, under the terms of the provisions of article 18 of the Regulation.

## **8. Rounds (article 27)**

Does paragraph 8 of article 27 permit the substitution of a bid already submitted in a given round (e.g. in the event of an error or alteration of the bidder's intention), so long as the round has not ended?

**Answer:** No.

## **9. Deposit – guarantee deposits (article 38)**

With regard to the guarantee deposit to be provided for deposits made under the terms of paragraphs 3 and 4 of article 38 of the Regulation, in relation to the 50% of the deposit to be deferred over 7 years, can entities wishing to exercise this option provide 7 bank guarantees under the required terms, each of them for the annual value, to facilitate the partial annual release provided for in paragraph 11 of article 38 of the Regulation?

If this understanding is acceptable, after paying the 1/7 due each year, ANACOM would release each of these 7 guarantees annually until the end of the deferral period.

**Answer:** No. There must be a single guarantee deposit covering the overall amount for the 7 years, and the corresponding portion must be released at the end of each year, depending on the payments made, so it is not technically or legally feasible to divide it between 7 bank guarantees / insurance bonds, as none of these instruments would guarantee the overall amount due for the period of 7 years, as required by paragraphs 10 and 11 of article 38 of the Regulation.

## **10. Network access obligations – national roaming (article 45)**

Under the terms of sub-paragraph (b) of paragraph 7 of article 45 of the Auction Regulation, new entrants will only be able to benefit from national roaming “\ [...] in geographic areas where the beneficiary does not have mobile coverage using the frequencies that it has been assigned”.

As previously mentioned, even in areas where, with the assigned frequencies, a new entrant has coverage with the latest network technologies, it will not have coverage with legacy technologies, so it will not be able to provide the full range of mobile services available and expected by an end user, and will be prevented from competing effectively. In these conditions and taking into account the understanding expressed by ANACOM in the Public Consultation Report, as mentioned above, we can only assume that the restriction in sub-paragraph (b) of

paragraph 7 of article 45 is applicable to the network technologies implemented by the new entrant.

In order to facilitate the implementation of roaming agreements, we believe that these should ensure coverage throughout Portugal's national territory and include support for all existing or future technologies in the network of the granting operator. It is our understanding that the benefiting operator's customer terminal must be configured to choose the benefiting operator's network first, and wherever or whenever it is not available, then choose the granting operator's network. In addition, there can be no discrimination whatsoever, either regarding coverage or quality of service, between customers of the benefiting operator and those of the granting operator. Therefore, we request confirmation that our understanding, expressed above, regarding the interpretation of sub-paragraph (b) of paragraph 7 of article 45 of the Auction Regulation is correct.

**Answer:** In accordance with sub-paragraph (b) of paragraph 7 of article 45 of the Regulation, network access obligations are in force in geographical areas where the beneficiary does not have mobile coverage through the use of the frequencies assigned to it.

As this is a question of obligation of access to the network, which involves the benefit of negotiating roaming agreements, it follows from the aforementioned provision that, in geographical areas where the beneficiary ensures coverage through a certain frequency band, the obligations of access to the network do not apply specifically to this band, and apply to other frequency bands, under the terms and conditions set out in article 45, that is, under non-discriminatory conditions, respecting the commercial autonomy of the entities involved, in particular regarding the distribution networks and market segments addressed, enabling conditions for effective competition, specifically with regard to the provision of services under appropriate technical conditions and the availability of reasonable conditions of remuneration.

### **REQUEST III.**

#### **1. Article 2:**

– Can you confirm the understanding that the concept of “new entrant” applies only to entities that are not, directly or indirectly, holders of frequency usage rights in bands designated for electronic communications services? If so, do you confirm the understanding that Dense Air Portugal Unipessoal, Lda. is not, for this effect, a “new entrant”?

**Answer:** The concept of new entrant applies only to entities that, on the date of entry into force of the Regulation, do not hold rights to use frequencies in Portugal, in bands designated for

terrestrial electronic communications services, and that do not have direct or indirect control or significant influence, under the terms provided for in paragraphs 3, 4 and 5 of article 8, of entities holding frequency usage rights in bands designated for terrestrial electronic communications services in Portugal. The second understanding is correct.

– Can you confirm the understanding that entities are excluded from the concept of “new entrant” if they are, directly or indirectly, holders of rights of use of frequency in bands designated for electronic communications services issued by any public entities of European Countries (whether or not they are EU Member States) and/or are based in one of these States?

**Answer:** This understanding is not correct.

## **2. Articles 4 and 6:**

– Can you confirm our understanding that only the acts provided for in sub-paragraphs (b) and (c) of paragraph 1 of article 6 will be practised through the electronic platform referred to in paragraph 4 of article 6?

**Answer:** The acts provided for in sub-paragraphs (b) and (c) of paragraph 1 of article 6 of the Regulation are practised through the platform, unless alternative means must be used, under the terms of paragraphs 4 and 5 of article 17 or of paragraphs 4 and 5 of article 25. The act provided for in sub-paragraph (d) of paragraph 1 of article 6 is also performed on the platform, under the terms provided for in paragraph 4 of article 35.

– If this is the case, please confirm our understanding that all other communications, including those relating to the exercising of the powers listed in paragraph 2 of article 4, between ANACOM and the applicants, will be made via the email provided by them for this purpose.

**Answer:** During the application phase, communications can be made by official memorandum, by post, electronically or by notices on ANACOM's website.

## **3. Article 6:**

– Can you confirm our understanding that ANACOM will immediately suspend the Auction if there is any error or deficiency in the electronic platform (regarding either ANACOM's use or the use of one of the bidders) that is not attributable to the bidders?

**Answer:** This understanding is not correct.

– Do you consider that, taking into account, namely, the State of Emergency that has since been declared, ANACOM will publish a set of measures that will adapt the Auction procedure to the restrictions arising from COVID-19? If so, please confirm the understanding that the measures will include the adequacy of the Auction procedure, at least, but not limited to, the following situations: mandatory declaration of quarantine (whether or not, applicable to the entire national territory); declaration of public health barriers; circulation bans; prohibition of entry and exit from national territory and/or setting of conditions for entering or exiting national territory (namely, through declaring a mandatory prophylactic quarantine); or the mandatory quarantine for any member of an applicant's team? Clarification is also requested on the date on which ANACOM plans to publish such measures.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

– In view of the possibility that applicants have team members residing in other Countries and that it is not technically feasible (or even possible) to replace them with others, since they are rare specialists in the national and international market, can you confirm the understanding that ANACOM will immediately suspend the Auction, if any of the following conditions are met:

- a) Mandatory quarantine is declared in any area of national territory;
- b) Sanitary barrier in any municipality of national territory is established;
- c) Movement between municipalities in national territory for periods of working days is prohibited;
- d) Travel to and from national territory is declared impossible;
- e) A mandatory quarantine period is set for those who arrive in national territory;
- f) A mandatory quarantine period is set by any national authority, including the State in which an applicant's team member resides.

**Answer:** See previous answer.

– If so, can you confirm the understanding that the auction will remain suspended for the period of time necessary until all the conditions found are fully resolved, and under no

circumstances can the procedure be resumed without all applicants confirming that the necessary conditions have been met for this effect?

**Answer:** See previous answer.

– If not, clarification is requested regarding the specific situations in which ANACOM will decide, in this context, to temporarily suspend the Auction, naturally, bearing in mind that the restrictions arising from measures to combat the epidemiological outbreak are mandatory and potentially absolutely crippling for applicants (in which case an illegitimate advantage would be attributed to the others).

**Answer:** See previous answer.

#### **4. Article 8:**

– Can you confirm the understanding that, if at the date of the bidding, there are no rights of use of the frequency in the 3.6 GHz band, they will be available for bidding without any limitations or restrictions?

**Answer:** The lots available at the auction and the respective conditions of use are set in the Regulation with reference to their date of entry into force. The restrictions on the use of lots in categories H and I are dependent on notification by ANACOM of the end of these restrictions, as provided for in the Regulation.

– Can you confirm the understanding that Dense Air cannot be assigned a category J spectrum, since this entity already owns a FUR in the 3.6 GHz band?

**Answer:** This understanding is correct.

#### **5. Article 10:**

– Can you confirm the understanding that the provisions of paragraphs 1 and 2 do not prevent applicants from being able to provide guarantee deposits through other guarantees expressly provided for in the law, namely in article 199 of the Code of Tax Procedure and Proceedings? If so, can you confirm the understanding that a guarantee deposit can be provided through a deposit guarantee-bond in ANACOM's favour with a reputable banking institution? If so, to demonstrate that this deposit guarantee has been provided, does ANACOM consider that a statement issued by this Banking Institution proving the aforementioned deposit and the respective amount, accompanied by the respective deposit document, is sufficient? If not, will ANACOM provide any draft or form for this purpose? If so, until when and by what means?

**Answer:** Under the terms of paragraph 2 of article 10 of the Regulation, the guarantee deposit referred to in the preceding paragraph shall be provided by a bank guarantee or insurance bond in ANACOM's favour, in both cases on first demand, in accordance with the forms set out in Annex 2 of this Regulation.

– Can you confirm the understanding that applicants will not have to identify which categories of lot they intend to bid for when providing the guarantee deposit, and all that is required is that the guaranteed amount calculated is sufficient for the number of eligibility points they wish to use?

**Answer:** This understanding is correct.

– Can you confirm the understanding that the use of eligibility points unsupported by the guarantee deposit provided leads to the immediate exclusion of their bid? If not, should it be understood that it leads to exclusion from the auction procedure?

**Answer:** Bids involving the use of more eligibility points than the bidder has available in a given round will not be accepted.

– Can you confirm the understanding that, in the application process, applicants may present a certified copy of the original guarantee deposit? If not, should it be understood that it is mandatory to deliver the original guarantee deposit?

**Answer:** It is mandatory to deliver the original guarantee deposit, under penalty of exclusion of the application under the combined terms of article 10, paragraphs 1 and 2, article 13, paragraph 1, sub-paragraph (d), and article 15, paragraph 2 of the Regulation.

– Can you confirm the understanding that a “guarantee deposit of 15 million euros guarantees the maximum number of eligibility points that can be used in both phases of bidding”, despite the sum of the value of eligibility points referred to in article 7 being EUR 15,200,000.00?

**Answer:** It is confirmed that a guarantee deposit of 15 million euros guarantees the maximum number of eligibility points that can be used in both bidding phases.

– Can you confirm our understanding that the 5-day period referred to in paragraph 4 should be counted with reference to the date of each of the events referred to in sub-paragraphs (a) to (c) of paragraph 4?

**Answer:** This understanding is correct.

- Can you confirm the understanding that, in the event of a delay in the release of the guarantee deposit, ANACOM will pay the compensation due under the terms of paragraph 5 without requiring any decision (administrative, judicial, arbitrary, etc.) so that all that is required is that it be requested by the bidder?

**Answer:** The right to compensation due to a delay in releasing the guarantee deposit referred to in paragraph 5 of article 10 of the Regulation is exercised by the applicant or the bidder under the general terms, by means of a request or by an administrative or judicial decision, depending on the specific case.

#### **6. Article 11:**

– Can you confirm the understanding that the answer to requests for clarification and the respective requests for clarification will be made available in full on ANACOM's website? If so, within what period will they be made available?

**Answer:** Under the terms of paragraph 4 of article 11 of the Regulation, the Board of Directors of ANACOM will publish on the respective website the content of requests and clarifications provided, specifically concealing any information necessary to ensure the confidentiality of the identity of the applicants and potential bidding strategies. The publishing will occur as soon as possible.

– Can you confirm the understanding that, in the event it is impossible to comply with the deadline of 3 working days, ANACOM will officially extend the deadline for the submission of applications?

**Answer:** As provided for in article 4 of the Regulation, ANACOM may determine other dates and deadlines for carrying out the different phases of the auction, in the event of exceptional circumstances.

#### **7. Article 12:**

– Can you confirm the understanding that only applications submitted by 4 p.m. on the 15<sup>th</sup> working day from the day this Regulation enters into force will be accepted? If so, can you confirm that this day is 27 November 2020?

**Answer:** This understanding is correct.

– Can you confirm the understanding that, in the event travel to ANACOM services is restricted due to the COVID-19 epidemiological outbreak, ANACOM will communicate, in advance, the

alternative means of delivery for Applications? If so, how far in advance will this notice be given and what means of communication will be used?

**Answer:** The Regulation contains provisions allowing ANACOM's Board of Directors to make the decisions that are most appropriate, at any time, for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (see article 4 of the Regulation), and they will be announced within the time limits and by the means considered most appropriate.

– Can you confirm the understanding that the application request must be signed by the respective legal representatives, and this signature and the signatory's powers must be recognised through a declaration recognising the signature with specific observations, pursuant to the provisions of paragraph 3 of article 153 of the Notaries' Code?

**Answer:** This understanding is correct.

– Can you confirm the understanding that ANACOM's services will provide applicants with a "receipt of proof of delivery of the application" on its own form, so there is no need for each applicant to present a document for this purpose when they submit their application?

**Answer:** This understanding is correct.

– Can you confirm the understanding that applicants may request an extension of the deadline for submitting applications until the last working day of the deadline for submitting them? If not, is there a deadline for submitting requests to extend the deadline for submitting applications?

**Answer:** In accordance with the provisions of paragraph 5 of article 12 of the Regulation, applicants may submit a reasoned request to extend the deadline for the submission of applications. Such a request must be submitted before the deadline expires, but sufficiently beforehand for it to be analysed and decided on by ANACOM in reasonable time.

– Can you confirm the understanding that requests to extend the deadline for submitting applications are submitted electronically via the email provided by ANACOM for presenting requests for clarification (as per paragraph 2 of article 11)? If not, what is the appropriate means of submitting requests for an extension of that deadline?

**Answer:** Communications with ANACOM's Board of Directors that do not constitute requests for clarification under the terms of paragraph 1 of article 11 of the Regulation can be carried out by the means that the applicants consider most appropriate.

## 8. Articles 12 and 13:

– Can you confirm the understanding that the application must be submitted in a closed envelope to be placed in another envelope together with the envelope related to the application documents, even though the two envelopes (the one for the application and the documents, referred to in articles 12 and 13 respectively) are separate from each other? If not, can you confirm the understanding that applicants must present two “loose” envelopes, one with the application request (referred to in article 12) and the other with the application documents (referred to in article 13)?

**Answer:** The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope, separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

– Can you confirm the understanding that ANACOM wishes the envelopes to be closed with a “seal” to prove they are unopened and intact?

**Answer:** The Regulation does not establish that the envelopes must be sealed.

– In any case, can you confirm the understanding that all envelopes, without exception, should only display the following information: a) be addressed to the Chairman of the Board of Directors; b) make reference to the auction application; c) the “reference to the auction application”, which will be considered correctly made by referring to the present Regulation?

**Answer:** In addition to the answer to the first question of this paragraph 8, it is confirmed that the full title of the Regulation can be used or just an abbreviated title.

## 9. Article 13:

– Can you confirm the understanding that the signature of the declaration referred to in sub-paragraph (a) of paragraph 1 of article 13 must be recognised through a declaration recognising the signature with specific observations, pursuant to the provisions of paragraph 3 of article 153 of the Notaries' Code?

**Answer:** This understanding is correct.

– Can you confirm the understanding that presenting the access code for the permanent certificate dispenses with the need to present the current certificate itself? If not, can you confirm the understanding that presenting the access code to the permanent certificate implies the presentation of a copy of the current certificate to which it relates?

**Answer:** The first understanding is correct.

– Clarification is requested on precisely what ANACOM is referring to in the complementary obligation “including the issuance of the licences” mentioned in sub-paragraphs (b) and (c) of paragraph 1.

**Answer:** In accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 1 of article 13 of the Regulation, the permanent certificates of the applicant and their respective statutes must remain valid for the auction period, including the issuance of the licences envisaged in article 40 of the Regulation.

– Can you confirm the understanding that any changes and/or updates reflected in the applicant's permanent certificate will not be considered a breach of the obligation to maintain a valid permanent certificate and respective access code?

**Answer:** Under the terms of sub-paragraph (b) of paragraph 1 of article 13, it is the applicants' responsibility to ensure that the validity period of the access code to the permanent certificate covers the entire auction period.

It is important to note that, under the terms of sub-paragraph (g) of paragraph 1 of article 13 of the Regulation, applicants must submit, with their application, a declaration in which they indicate who the owners are, in what amount they hold an interest in the share capital of the applicant and, in the case of any or some of the partners being a legal person, include information that will allow the verification of compliance with the provisions of article 8, taking into account the criteria established in article 21 of the Securities Code.

Given the importance of this information as a precondition for the other phases of the auction, particularly as regards assessing any limits to the allocation of frequencies under article 8 of the Regulation (limits whose management will be handled by the electronic platform in the bidding phase), it is considered that it should remain unchanged from the moment the application is submitted until the issuance of the licenses for the allocation of frequency usage rights, which substantiate these rights, including the conditions associated with the respective exercise, after prior hearing of their holders (as per article 40, paragraphs 3 to 5 of the Regulation).

– Clarification is requested as to whether, for the purposes of complying with the provisions of sub-paragraph (h) of paragraph 1 of article 13, ANACOM wishes only one list to be presented with the identification of all natural and legal persons who hold an interest in the Applicant's share capital (in this case, its sole shareholder), with express mention of the amount of the respective shareholding. If so, and if the partner is a legal person, does ANACOM wish, for the purposes of complying with the final part of this sub-paragraph, that a second list be presented with:

- (i) information on the owners of qualifying holdings, pursuant to the provisions of articles 16 and 20 of the Securities Code, comprising the information that must be published in this regard and permanently made available by public companies on their websites;

***and/or***

- (ii) with identification of all the entities in the partner's consolidated perimeter (which usually appears in the notes on the respective consolidated financial statements)? If not, what information does ANACOM want transmitted to verify compliance with article 8 of the Regulation, including cases in which the sole partner is a public company with shares admitted to trading on a regulated market and, as such, is not covered by the Legal Regime of the Central Register of Effective Beneficiaries (Registo Central de Beneficiário Efetivo – RCBE), under the terms of the respective article 4, sub-paragraph (f)?

**Answer:** The request for clarification presented refers to sub-paragraph (g) of paragraph 1 of article 13 of the Regulation and not to sub-paragraph (h).

In the declaration envisaged in sub-paragraph (g) of paragraph 1 of article 13 of the Regulation, applicants must indicate who the owners are, whether natural or legal persons, and in what amount they hold an interest in the applicant's share capital, and also, in the case of any of the partners being a legal person, include information, even if it is public and available, that

allows the verification of the existence of direct or indirect relationships of control or significant influence, including the identification of entities within the partner's perimeter of consolidation, for the purposes of assessing the aforementioned relationships, under the terms provided for in the Securities Code.

Entities subject to the Legal Regime of the Central Register of Effective Beneficiaries must additionally provide proof of this registration.

If ANACOM considers that the application documents do not provide it with all the elements necessary to evaluate potential relationships of control or significant influence, as mentioned in paragraphs 3 and 4 of article 8 of the Regulation, it may request additional clarifications, pursuant to article 5 of the Regulation, in order to verify compliance with the auction rules, specifically bearing in mind the powers of the Board of Directors provided for in sub-paragraph (g) of paragraph 2 of article 4 of Regulation.

– Can you confirm the understanding that presenting the access code to the Statutes does not require the presentation of a certified copy of the Statutes currently in force? If not, can you confirm the understanding that presenting the access code to the Statutes implies the presentation of a certified copy of the current Statutes it refers to?

**Answer:** The understanding is correct regarding the first question.

– Can you confirm the understanding that any changes and/or updates reflected in the applicant's statutes will not be considered a breach of the obligation to maintain a valid “permanent certificate of the respective statutes” and the respective access code?

**Answer:** This understanding is correct, without prejudice to the powers of the Board of Directors of ANACOM provided for in article 4 of the Regulation, specifically those provided for in sub-paragraph (e) of paragraph 2 therein, in the event of any changes and/or updates reflected in the applicant's Statutes.

– Can you confirm the understanding that, with regard to the Declaration referred to in sub-paragraph (h) of paragraph 1 of article 13, a declaration should be presented for each of the natural persons identified in the declaration mentioned in sub-paragraph (f) of paragraph 1 of the same article? If so, can you confirm the understanding that the signature on each of the aforementioned declarations should be subject to simple recognition, under the terms of paragraph 2 of article 153 of the Notaries' Code?

**Answer:** The understanding is correct regarding the first question, and simple recognition is not necessary.

– Can you confirm the understanding that applicants must present the elements referred to in paragraph 3 of article 13 in a separate document?

**Answer:** The information required in paragraph 3 of article 13 of the Regulation can be presented in a separate document and must be attached to the envelope containing the documents to be filed with the application.

#### **10. Article 15:**

– Can you confirm the understanding that all applicants, whether or not they are new entrants, will be notified on the same day of the decision to accept or exclude their respective applications?

**Answer:** This understanding is correct.

– In view of the provisions of sub-paragraph (a) of paragraph 5, can you confirm the understanding that all applicants, without exception, will be informed of the starting date of the bidding phase for new entrants?

**Answer:** This understanding is correct.

– Can you confirm the understanding that the bidding phase for new entrants, if any, will not take place before the 7<sup>th</sup> working day following the notification referred to in paragraph 3 of article 15? If this is not the case, what is the maximum and minimum time between the notification of new entrants and the holding of the bidding phase for them?

**Answer:** This understanding is correct.

– Can you confirm the understanding that if the notification to candidates who are not new entrants includes the date on which the main bidding session is to be held, this automatically means that there will be no bidding phase for new entrants?

**Answer:** The understanding is correct, providing this is a notification made pursuant to article 15 of the Regulation.

– Can you confirm the understanding that if the notification made to candidates who are not new entrants does not contain the date for the holding of the main bidding session, this necessarily means that there will be a bidding phase for new entrants?

**Answer:** This understanding is not correct, in view of the provisions of paragraphs 6 and 7 of article 15 of the Regulation.

– Can you confirm the understanding that the 24-hour period referred to in paragraph 6 of article 15 must be “calculated” pursuant to the terms of sub-paragraph (b) of article 279 of the Civil Code, i.e. the deadline should be considered to be at 23:59 the next day? Can you also confirm the understanding that the 24-hour period referred to in paragraph 6 of article 15 will be transferred to the first subsequent working day if it ends on a non-working day?

**Answer:** The calculation of the deadlines envisaged in the Regulation is subject to the rules of article 87 of the Code of Administrative Procedure as established by article 49 of the Regulation.

– Can you confirm the understanding that, in the absence of a bidding phase for new entrants, the remaining non-entrant applicants will be notified of this? If so, what is the deadline for this notification?

**Answer:** This understanding is not correct, given that the applicants are notified, under the terms provided for in paragraphs 5 and 7 of article 15 of the Regulation, of the dates when the bidding phases begin.

– Can you confirm the understanding that the notification referred to in paragraph 7 only applies if the “new entrant” applicants communicate, under the terms of paragraph 6, that they intend to participate in the bidding phase for new entrants? If this is not the case, does the notification referred to in paragraph 7 also apply if all the new entrants are excluded, or in the event that no applicant who is a new entrant presents an application within the scope of this procedure?

**Answer:** The understanding expressed in the first part of the question is correct.

– If there is no bidding phase for new entrants because there are no applicants who are new entrants, or because, in accordance with the provisions of article 15, paragraph 6, new entrants have expressed their intention to only participate in the main bidding phase, will applicants who are not new entrants, be notified that there will be no bidding phase for new entrants? And will candidates be informed of the reason there is no bidding phase for new entrants?

**Answer:** Pursuant to paragraph 7 of article 15 of the Regulation, in the absence of applicants for the bidding phase for new entrants, applicants will be notified of the start date of the main bidding phase, but not of the absence of a bidding phase for new entrants.

– In view of the provisions of paragraph 1 of article 14, can you confirm the understanding that applicants will be notified of the decision to accept or exclude applicants, on the 7<sup>th</sup> working day after the date of submission of applications? If not, can you confirm the understanding that the period of 6 working days for the analysis of applications (as per Article 14, paragraph 1 of the Regulation) does not coincide with the time limit for issuing a decision on their acceptance or exclusion? If so, what is the time limit for the Board of Directors of ANACOM to decide on the acceptance or exclusion of applications?

**Answer:** This understanding is not correct. Under the terms of articles 14 and 15 of the Regulation, the decision to accept or exclude applications must be taken within 6 days, counting from the end of the period for the submission of applications, and applicants must be immediately notified of this, no later than the next working day.

– Can you confirm the understanding that the conditions of access to the electronic platform and the use of alternative means, referred to in paragraphs 3 and 4 of article 17, and in paragraphs 3 and 4 of article 25, including the date, time and place for training sessions on the electronic platform, will be communicated on the same day to all accepted applicants, whether or not they are new entrants? If not, does this mean that there will be a distinction, particularly as regards time, between applicants who are “new entrants” and those who are not? If so, what time lag will ANACOM consider between the dates of the two notifications?

**Answer:** This understanding is correct.

– Can you confirm the understanding that one of the items of information to be transmitted to applicants, under the terms of sub-paragraph (b) of paragraph 5 of article 15, is the authentication information referred to in paragraph 5 of article 17?

**Answer:** This understanding is not correct.

– Clarification is requested on how and when applicants will indicate whether they choose on-site training or remote training.

**Answer:** In accordance with sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, ANACOM is responsible for notifying accepted applicants of the format of the training.

## 11. Articles 15 and 24:

– Can you confirm the understanding that, pursuant to article 15 of the present Regulation, if there is no bidding phase for new entrants, the main bidding phase will not start before the 7<sup>th</sup> day after notification of the start date of the main bidding process phase. Is this understanding correct? If not, clarification is required of situations where, in the absence of a bidding phase for new entrants, the main bidding phase may take place less than 7 days from the date notification is given of the start date of the main bidding phase.

**Answer:** This understanding is correct.

– Can you confirm the understanding that the notification referred to in paragraph 4 of article 24 is always made at least 7 working days in advance of the start date of the main bidding phase? If so, can you confirm the understanding that the main bidding phase may take place 7 working days after this notification, but never before this period? If not, what is the minimum notice period within which the notification envisaged in paragraph 4 of article 24 will be made regarding the start of the main bidding phase?

**Answer:** This understanding is not correct. The notification provided for in paragraph 4 of article 24 of the Regulation will be carried out with adequate advanced notice of the start of the bidding.

– Can you confirm the understanding that ANACOM will ensure, in any event, a reasonable period of time between the notification date provided for in paragraph 4 of article 24, and the start date of the main bidding phase, so as not to give an illegitimate advantage to the “new entrants”?

**Answer:** See previous answer.

– Can you indicate how many days can elapse after the notification provided for in article 24, paragraph 4 and the start date of the main bidding phase?

**Answer:** See previous answer.

– Can you confirm the understanding that the communication referred to in article 24, paragraph 4, will also occur within 60 minutes after the end of the phase for new entrants (in accordance with article 24, paragraph 1)? If not, what will be the interval between the end of the bidding phase for new entrants and the sending of the communication referred to in paragraph 4 of article 24?

**Answer:** See previous answer.

– Clarification is requested as to whether the 7-day interval between the completion of the bidding phase for new entrants and the main bidding phase referred to in paragraph 7 of article 15 only applies when there is no bidding phase for new entrants, or if it will also apply in the event there is a bidding phase for new entrants.

**Answer:** Pursuant to paragraph 7 of article 15, in the absence of applicants for the bidding phase for new entrants, the main bidding phase will not take place before the seventh day after the notification. If there are two phases of the bidding process, the notification provided for in paragraph 4 of article 24 will be made with adequate advance notice of the start of the bidding.

## **12. Article 17:**

– Can you confirm the understanding that the technical problems referred to in this article may be attributable to either ANACOM or the bidder(s), in other words, the existence of technical problems with the bidder's equipment and/or communication systems will permit alternative means to be used? If so, please confirm the understanding that applicants should immediately report the occurrence of any problems, in which case ANACOM will immediately suspend the auction.

**Answer:** This is incorrect. ANACOM clarifies that, under the terms of article 25 of the Regulation, it is not responsible for technical problems attributable to the bidder's communications equipment or systems. Depending on the problem and its severity, the Board of Directors of ANACOM, under the terms of article 4, will analyse and make decisions, always with the aim of resolving the situation as quickly as possible, in order to allow the auction to run normally, thereby defending the interests of all bidders. It should be remembered with respect to this, that it was decided that alternative means could be used in the event of a technical problem with the operation of the platform, in compliance with the rules established for the auction.

– Clarification is requested on the procedure to be followed when using the alternative means of communication referred to in paragraph 5 of article 25. Could the use of alternative means be activated by ANACOM, as well as by bidders? Further clarification is requested as to whether any formality will be necessary, specifically regarding the reporting of failure, either by ANACOM or by the applicants.

**Answer:** See previous answer. The training activity to be held by ANACOM is specifically intended to convey the operational procedures related to use of alternative means of communication, in the event of technical failure by the platform.

– Clarification is requested on the procedure to be adopted by applicants if they need to use the alternative means for bidding.

**Answer:** See previous answer.

### **13. Article 19:**

– Can you confirm the understanding that the rounds take place on the working days previously set and communicated by ANACOM to the applicants accepted for the bidding phase? And that, therefore, the prior notice provided for in point 2 will be with respect to each of these days previously set and communicated by ANACOM?

**Answer:** In accordance with paragraphs 5 and 7 of article 15 of the Regulation, applicants are notified of the start date of the main bidding phase, that is, they are only notified of the date of the first round. Pursuant to paragraphs 2 and 6 of article 19 of the Regulation, bidders are notified of the start of each round.

– Can you confirm the understanding that the bidding phase for new entrants will not take place during 21 to 25 of December, in view of the Christmas period and the expected restrictions on movement on these dates, which may apply not only in Portugal, but also to entering and leaving national territory? Can you also confirm the understanding that, even if such restrictions will not be applied by the Portuguese Government, ANACOM, in consideration of the guidelines of the General Health Directorate, will not hold the bidding phase in the aforementioned period from 21 to 25 December?

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

### **14. Article 25:**

– Can you confirm the understanding that the technical problems referred to in this article may be attributable to either ANACOM or the bidder(s), in other words, the existence of technical problems with the bidder's equipment and/or communication systems will permit alternative

means to be used? If so, please confirm the understanding that applicants should immediately report the occurrence of any problems, in which case ANACOM will immediately suspend the auction.

**Answer:** See the answer to the questions in point 12.

– Can you confirm the understanding that obvious written errors by the applicants will be identified during the bidding? If so, should applicants communicate them to ANACOM by means of a declaration to be submitted on the electronic platform, or will this platform be capable of immediately communicating these errors?

**Answer:** The electronic platform supports the holding of the auction in accordance with the Regulation. ANACOM will carry out training actions intended to present the platform and the alternative means.

Without prejudice, it is clarified that the submission of bids on the platform does not involve the use of writing.

– Clarification is requested on the procedure to be followed when using the alternative means of communication referred to in paragraph 5 of article 25. Could the use of alternative means be activated by ANACOM, as well as by bidders? Further clarification is requested as to whether any formality will be necessary, specifically regarding the reporting of failure, either by ANACOM or by the applicants.

**Answer:** See the answer to the questions in point 12.

– Clarification is requested on the procedure to be adopted by applicants if they need to use the alternative means for bidding.

**Answer:** See the answer to the questions in point 12.

– Clarification is requested on whether the authentication information requested from candidates is exclusively that referred to in paragraph 4 of article 17. Further clarification is requested as to whether any prior preparation by the bidding applicants will be necessary, namely regarding the availability of specific software.

**Answer:** See the answer to the questions in point 12. As referred to in paragraph 5 (and not 4) of articles 17 and 25 of the Regulation, the bidder must provide the authentication information requested for that purpose, which will be made available beforehand by ANACOM.

– Clarification is requested as to which mechanism or property of the platform ensures that the Auction is immediately suspended in the event of a technical problem, if it is attributable to ANACOM. Clarification is also requested on situations in which the technical problem is due to one of the candidates.

**Answer:** See the answer to the questions in point 12.

– The following clarifications are requested regarding the electronic platform referred to in article 25, paragraph 3.

- Training, testing and simulation actions:

- . Will the training actions include a simulation of the auction?

**Answer:** See the answer to the second question in point 14.

- . Is some kind of test possible before the training action? If so, under what conditions?

**Answer:** See the answer to the second question in point 14.

- . Who may be present to represent the operators?

**Answer:** The persons indicated in the declaration provided for in sub-paragraph (f) of paragraph 1 of article 13 of the Regulation, specifically designated to submit bids in the name of and on behalf of the bidder.

- . Will the holding of in-person activities take place at ANACOM's premises?

**Answer:** Under the terms of sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, the training actions may take place in person, in which case they will be carried out at the headquarters building of ANACOM.

- . What is the expected duration of the action?

**Answer:** No specific duration has been set. The training actions will be of adequate duration to present the platform and the alternative means, as well as to clarify questions posed by the bidders.

- . As end-to-end simulation sessions are essential to ensure proper operation in a real auction environment, how will these sessions be organised? Namely, how long will these sessions be, what technical support will be available to make potential

adjustments with the bidders' technical teams, and what will be the criteria for determining whether the system as a whole is ready to start the auction?

**Answer:** See the answer to the second question in point 14 and to the previous question.

- Platform documentation and support:
  - . What additional detailed documentation regarding the platform (for example, manuals and specifications) will applicants have access to, and within what time?

**Answer:** Bidders will be provided with a manual regarding the platform, which will be sent as an annex to the notification by ANACOM's Board of Directors provided for in article 15 of the Regulation.

- . Clarifications is requested on if and when screenshots of the platform screens will be available, specifically in relation to: "Submission of offers", "Consultation of Rounds", "Bids (History)", "Publication of Results", "Assignment Phase".

**Answer:** See the answer to the previous question.

- . Will technical support for the platform be available from ANACOM? If so, how, and which service will guarantee this support, before and during the bidding phase?

**Answer:** See the answer to the second question in point 14.

- . What is the response time for this potential technical support service? Is this response time guaranteed? In the event of failure to provide technical support that impacts the ability of a particular bidder to place bids, will the auction be suspended?

**Answer:** See the answer to the questions in point 12. As for the last question, this is a matter subject to analysis and a case-by-case decision by the Board of Directors of ANACOM, in the exercise of the powers vested in it by article 4 of the Regulation.

- Platform access:
  - . Is it possible for a bidder to install various clients on the platform to create redundancy between equipment?

**Answer:** The platform features support for computers and mobile devices using web browsers, and it is not necessary to install any specific application to support or access to it.

- . In order to guarantee redundancy and prevent failures, can a bidder be connected to multiple clients (on different PCs) simultaneously? If so, with the same or different credentials?

**Answer:** In accordance with the provisions of article 13 of the Regulation, the applicant should identify up to six legal representatives to submit bids in its name and on its behalf, to whom the respective authentication elements will be provided.

- Information Integrity:

- . What level of information integrity does the tool guarantee, in the event of an application, machine or network failure? For example, what information is locally resident on the operator's machine and automatically submitted when the machine or connection is resumed? What recovery mechanisms are envisaged?

**Answer:** See the answer to the second question in point 14.

- . In the event of failure by the client software, what is the fall-back procedure?

**Answer:** See the answer to the second question in point 14.

- . ANACOM has already indicated the alternative means for bidders to submit bids in the event of failure. However, it is necessary to obtain details on these alternative means: telephone numbers, protocol, conditions of use, including time frame and/or activation limits, particularly with respect to the closing of the round, etc.

**Answer:** See the answer to the questions in point 12.

- . Are there alternative means of communicating the results of the rounds to the bidders, in the event that the client software fails, and, if so, what are they? Are they the same as those mentioned in the previous point? In this regard, it should be noted that the information on the results of the rounds may be extensive, which may affect the viable alternative means of communication.

**Answer:** See the answer to the questions in point 12.

- Access to information:
  - . Is the auction history resident on the platform?

**Answer:** See the answer to the second question in point 14.

- . If it is not resident, do bidders have access to the server outside auction hours?

**Answer:** See the answer to the second question in point 14.

- . Will the client software record (log) all actions performed? In the event of application failure by the client software, how can the bidder demonstrate the occurrence of this failure?

**Answer:** See the answer to the question in point 12, and to the second question in point 14.

- Results of the rounds:
  - . Is there a way to download aggregate results of a round into an output file? This point is fundamental for the analyses that the bidders will have to carry out during the auction, and its absence would have a strong negative impact, specifically by increasing errors in the manual copying of data from the client software to the bidder's analysis software.

**Answer:** See the answer to the second question in point 14.

- . Is there a way to download a bidder's cumulative aggregate results from the start of the auction?

**Answer:** See the answer to the second question in point 14.

- . Clarification is requested on how to identify the blocks with no activity, since the information provided is not clear.

**Answer:** The information communicated to bidders prior to the start of each round, under the terms of paragraph 7 of article 27, includes the prices of the lots, which, if they have not varied compared to the previous round, mean that they have not been bid on, or have a better associated offer that is unchanged.

- . Assuming that the output file referred to in the previous point will be made available, how will this be reflected?

**Answer:** See the answer to the second question in point 14.

- Submission of bids:
  - . How will the successful submission of a bid be confirmed (acknowledged)?

**Answer:** See the answer to the second question in point 14.

- . How will the successful submission of a waiver be confirmed (acknowledged)? In addition to its ability to download information, will the tool allow the printing of results and the printing of submitted bids? This point is important for the purposes of filing and registering on the side of each bidder.

**Answer:** See the answer to the second question in point 14. Waivers are not submitted. They are considered activated when the bidder does not submit any bid in a round and, for that reason, loses eligibility points for the next round.

- Closing of the round:
  - . Will bidders have to “submit” and “confirm” bids before the round closes, or will they only have to submit bids? There may potentially only be a few seconds of difference between these two operations.

**Answer:** See the answer to the second question in point 14.

- Messages, communication and information security:
  - . How will communication between ANACOM and bidders be handled, in addition to information on results of rounds and the submission of bids?

**Answer:** In the bidding phases, communication is only carried out via the electronic platform and the alternative means, under the terms specifically provided for in the Regulation. The platform does not include the functionality of bidirectional communication.

- . Will a history of messages be available?

**Answer:** See the answer to the second question in point 14.

- . What is the response time to a question asked by a bidder?

**Answer:** In the bidding phases, communication is only carried out through the electronic platform and the alternative means, under the terms specifically provided for in the Regulation. The platform does not include the functionality of bidirectional communication.

- . How is confirmation given of the receipt of a message sent by the bidder?

**Answer:** See the answer to the previous question.

- . What are the details of the mechanisms that guarantee the security of connections?

**Answer:** See the answer to the second question in point 14.

- . Does the client software allow you to know, at any time, whether communication is being carried out over a secure channel (SSL)?

**Answer:** See the answer to the second question in point 14.

- . On the client software side, is it necessary to separately install a certificate or is it already included in the client software installation package?

**Answer:** The platform features support for computers and mobile devices using web browsers, and it is not necessary to install any specific application to support or access to it.

- . How can the bidder validate the authenticity of the certificate?

**Answer:** See the answer to the previous question.

## **15. Article 26:**

– Can you confirm the understanding that, before the first round, applicants will be notified of the start date of that round, as well as which lots of categories B and D are still available? If so, how far in advance will candidates be notified of both these matters?

**Answer:** The understanding is correct in relation to the first question. In relation to the second question, the notification provided for in paragraph 4 of article 24 of the Regulation will be made with adequate notice.

## 16. Article 27:

– Can you confirm the understanding that the ability of the Board of Directors of ANACOM to extend the duration of the round can be triggered by failures in the electronic platform, whether they occur on ANACOM's side or on the side of the bidder(s)? If so, how will bidders be notified of the occurrence of failures?

**Answer:** Article 27 of the Regulation provides that the Board of Directors of ANACOM may extend the duration of a round in the event of a platform failure. In relation to the procedures, see the answer to the questions in point 12.

– Can you confirm the understanding that the information indicated in paragraph 7 (which includes the results of round n-1) is confirmed at least 15 minutes before the start of round n (the deadline referred to in paragraph 2 of this article regarding the period of notification for the start of the next round)?

**Answer:** This understanding is correct.

## 17. Article 28:

– Can you confirm the understanding that the rules in paragraphs 2 and 3 contradict each other? If so, does the activation of the two waivers allowed determine the loss of eligibility points or not?

**Answer:** This is not correct, because paragraph 2 of article 28 defines the situations in which the waivers are activated, and paragraph 3 of the same article determines the consequence of this activation. Thus, the waivers are only activated when the bidder does not submit any bid in a given round, and consequently, loses eligibility points for the next round. In these situations, if a waiver is activated, this means that there is no loss of eligibility points.

– Can you confirm the understanding that waivers will only be automatically activated by the platform if the following situations cumulatively occur: (i) the bidder does not submit bids in the same round; (ii) the bidder has not yet activated all its available waivers (which are 2); (iii) the failure to submit a bid would imply the loss of the bidder's eligibility points for the next round? If so, can you confirm the understanding that, if these situations cumulatively occur, and there is an automatic activation of a waiver by the platform, there is no loss of eligibility points for the next round?

**Answer:** This understanding is correct.

And if so, can you also confirm the following understandings:

- a) If conditions (i) and (ii) are not met, will the provisions of paragraph 11 of article 26 apply?

**Answer:** If the question raised simply means that the bidder has submitted a bid, then the provisions of paragraph 11 of article 26 of the Regulation apply.

- b) If condition (iii) is not met, the bidder will not activate the waiver and, consequently, will not lose eligibility points.

**Answer:** If the bidder in a given round already holds better offers that comply with the eligibility points required for the activity level of that round, then it does not lose eligibility points for the next round. In this case, the waiver will not be activated.

#### **18. Article 29:**

- Can you confirm the understanding that ANACOM will only choose to restart the bidding phase in the initial round, in which case, in all other rounds the rule contained in paragraphs 4 and 5 of article 17 will apply?

**Answer:** Assuming that it was intended to refer to paragraphs 4 and 5 of article 25 of the Regulation, the understanding is correct.

- Can you confirm the understanding that the main bidding phase will not take place during 21 to 25 December, in view of the Christmas period and the expected restrictions on movement on those dates? Can you also confirm the understanding that, even if such restrictions are not be applied by the Portuguese Government, ANACOM, in consideration of the guidelines of the General Health Directorate, will not hold the main bidding phase in the aforementioned period from 21 to 25 December?

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

- Can you confirm the understanding that the ability of the Board of Directors of ANACOM to extend the duration of the round can be triggered by failures in the electronic platform, whether they occur on ANACOM's side, or on the side of the bidder(s)? If so, how will bidders be notified

of the occurrence of failures, and if the failures are on the side of the bidders, how should they request an extension of the duration of the round?

**Answer:** See the answer to the question in point 12, and to the first question in point 16.

– Can you confirm the understanding that the electronic platform will provide the necessary tools for the submission of the bid without the need to submit any documents in this regard? If so, can you confirm the understanding that this platform will allow the correction of obvious written errors, particularly in the presentation of the amounts bid? If the platform does not have a tool for that purpose, should candidates submit a written statement to that effect?

**Answer:** See the answer to the second question in point 14.

#### **19. Article 30:**

– Can you confirm the understanding that, in relation to lots that have not been the object of bidding, the Board of Directors may determine the loss of the guarantee deposit, pursuant to the provisions of paragraphs 3 and 5 of article 29?

**Answer:** This understanding is not correct. It is a failure to carry out a bid in the first round (in accordance with the provisions of paragraphs 2 and 3 of article 29) that determines the forfeiture of the guarantee deposit, under the terms of paragraph 5 of article 29 of the Regulation. Regarding subsequent rounds, it should also be noted that, under the terms of paragraph 5 of article 30, the deposit is declared forfeited to ANACOM if the withdrawing bidders hold the best offers.

– Can you confirm the understanding that the electronic platform provides a specific way of communicating an applicant's withdrawal, and there is no need to submit a specific document for this purpose?

**Answer:** Withdrawal is activated through a functionality provided by the platform.

– Can you confirm the understanding that, in the event of new entrants withdrawing in the main bidding phase, the lots that they have won in the bidding phase for new entrants will become available for bidding by the other candidates (whether or not new entrants) in the subsequent round at the prices defined by the Board of Directors of ANACOM, which cannot be lower than the respective reserve prices? If not, what procedure will be adopted by ANACOM with respect to these lots?

**Answer:** This understanding is not correct. Under the terms of paragraph 5 of article 30 of the Regulation, lots that have been won in the bidding phase for new entrants are lost, and are no longer included in the auction.

– Can you confirm the understanding that ANACOM will only choose to restart the bidding phase in the initial round, so that in the other rounds, the rule contained in paragraphs 4 and 5 of article 17 will apply?

**Answer:** Assuming that it was intended to refer to paragraphs 4 and 5 of article 25 of the Regulation, the understanding is correct.

– Can you confirm the understanding that the platform will contain a mechanism that makes it impossible to submit bids in violation of the values set out in paragraphs 2 and 3? If so, can you confirm the understanding that the mechanism provided for in paragraph 5 will only apply if no bid is submitted? If not, clarification is requested about the situations to which the provisions of paragraph 5 may apply.

**Answer:** See the answer to the second question in point 14. On the assumption that it was intended to refer to paragraphs 2 and 3 of article 29 of the Regulation, the understanding is correct that paragraph 5 of the same article only applies when a bid is not submitted in the first round.

#### **20. Article 31:**

– Clarification is requested as to whether bidding applicants will have the opportunity to audit the random selection procedure implemented by the electronic platform and the respective results, specifically after the conclusion of the bidding phase.

**Answer:** At the conclusion of the auction, all necessary information will be made available so that participants can assess the transparency of the entire process.

#### **21. Article 35:**

– Can you confirm the understanding that the session referred to in paragraph 5 of article 35 will not be held until all the complaints presented regarding the ordering of the winning bidders have been settled? If so, can you confirm the understanding that bidders will have at least 24 hours after notification of the ordering to submit their respective complaint?

**Answer:** The session provided for in paragraph 5 of article 35 will take place within a maximum period of 48 hours after the ordering of bidders, without prejudice to ANACOM's powers under article 4 of the Regulation.

– Clarification is requested on with what prior notice, within the 48-hour period referred to in paragraph 5, notification will be given of the date and time of the face-to-face session referred to in paragraph 7.

**Answer:** The notification provided for in paragraph 7 of article 35 of the Regulation will be made with adequate notice.

**22. Article 36:**

– Can you confirm the understanding that only accepted applicants will be notified of the draft report? If not, does this mean that all applicants, whether or not they participated in the bidding phase, will be notified of this draft?

**Answer:** This understanding is not correct. In accordance with article 36 of the Regulation, the draft auction report will be submitted to the prior hearing of applicants and bidders.

**23. Article 37:**

– Can you confirm the understanding that all bidders, including those who are excluded, will be notified of the decision on the allocation of frequency usage rights, as well as the final auction report and the report of the prior hearing? If not, can you confirm the understanding that only applicants accepted for the bidding phase will be notified?

**Answer:** In accordance with the prior hearing procedure, and following that mentioned in the answer to the previous question, all interested parties, including excluded applicants, will be notified of the approval of the final auction report and the respective decision to allocate frequency usage rights.

**24. Article 39:**

The following clarifications regarding the compensation provided for in paragraph 6 of article 39 are requested:

– What procedure should the operator adopt to request such compensation?

**Answer:** Under the terms of paragraph 6 of article 39 of the Regulation, compensation may be attributed to cover, in whole or in part, any costs associated with changes resulting from the decision referred to in paragraph 1 of this article, pursuant to the regime provided for in article 4 of Decree-Law no. 151-A/2000, of 20 July.

– Will all operators involved in altering the assignment of the frequencies be obligatorily notified? If so, how?

**Answer:** See previous answer.

– What is the process for deciding on the allocation of compensation, its amount and the applicable deadlines?

**Answer:** See the answer to the first question in point 24.

– What kind of information should operators keep about the process of changing the assignment?

**Answer:** See the answer to the first question in point 24.

– Which entity will support/settle the compensation and within what period?

**Answer:** See the answer to the first question in point 24.

## **25. Article 42:**

– Can you confirm the understanding that the coverage obligations provided for in article 42 can be fulfilled using any frequency band assigned within the scope of this auction, or assigned before the date of entry into force of the auction, regardless of whether there are changes of assignment in the future, namely, to allow the maximisation of contiguity?

**Answer:** This understanding is correct.

– Clarification is requested as to whether coverage obligations regarding highways, national road routes, rail routes and metro networks are limited to coverage obligations on motorways, road routes, railway routes and the metro networks of Lisbon, Porto and the South of the Tagus to the extent they are operational at the date of entry into force of the regulation.

**Answer:** Coverage obligations are those provided for in article 42. Annex 7 of the Regulation contains a detailed list of the highways and railways that make up this obligation. As mentioned in the report on the public consultation on the draft Regulation, the obligation to

cover road, rail and metro networks is not an evolving obligation, but is based on the routes existing at the date of publication of the Regulation.

– Clarification is requested as to whether the coverage obligations regarding highways, national road routes, rail routes and metro networks are limited to the infrastructure, highways and metro stations existing at the date of approval of the Regulation.

**Answer:** The meaning of this question is unclear. In any case, see the previous answer.

## **26. Article 45:**

– Clarification is requested as to whether or not an entity that previously holds or purchases 50 MHz in the 3.6 GHz band, including the spectrum corresponding to categories H and I, is a beneficiary of the access obligations currently provided for.

**Answer:** In accordance with the provisions of sub-paragraph (b) of paragraph 5 of article 45 of the Regulation, third parties who have access rights to the frequencies in the bands designated for terrestrial electronic communications services benefit from the access provided for in this paragraph, and under the terms of the auction, become holders of frequency usage rights.

– Confirmation is requested that an entity that holds more than 50 MHz, prior to the auction, and/or acquires it in the auction, even if it is in the category H or I spectrum, does not benefit from the access obligations provided for in article 45.

**Answer:** See previous answer.

## **REQUEST IV.**

### **A. Qualifying phase**

**I. Pursuant to paragraph 2 of article 12 and the introduction of paragraph 1 of article 13, both of the Regulation, the application request and the documents to be filed with the application request should be presented in separate envelopes.**

**1.1.** It is our understanding that the envelopes should be C4 size<sup>1</sup>(<https://www.tamanhosdepapel.com/c-tamanhos-envelope.htm>), so that they may accommodate A4 sheets.

**1.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** The envelopes must accommodate their content, but no specific format has been stipulated.

**II. Pursuant to paragraph 2 of article 12 and the introduction of paragraph 1 of article 13, both of the Regulation, the application request and the documents to be filed with the application request should be presented in closed envelopes.**

**2.1.** It is our understanding that the envelope does not need to be sealed or stamped, and only needs to be closed using the adhesive of the envelope itself, as is the practice in Public Procurement (as per paragraph 6 of article 170 of the Public Contracts Code).

**2.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**III. Also pursuant to paragraph 2 of article 12 of the Regulation, the envelope must be “(...) addressed to the Chairman of the Board of Directors of ANACOM, and shall include a reference to the auction application, but no other information that would allow identification of the applicant.”.**

**3.1.** It is our understanding that the applicant may only write the identification of the recipient on the front of the envelope (excluding the flap) – Chairman of the Board of Directors of ANACOM – and the text “Application to the Auction for the Allocation of Frequency Usage Rights in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands”.

**3.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** It is confirmed that, under the terms of paragraph 2 of article 12, the closed envelope should be addressed to the Chairman of the Board of Directors of ANACOM and only contain a reference to the auction application, which can be referred to using the full name of the auction, as indicated, or simply an abbreviated name, with no other elements that would allow the applicant to be identified.

**IV. Pursuant to paragraph 1 of article 12 and sub-paragraphs (a) and (f) and paragraph 1 of article 13 of the Regulation, the signatures on the declarations on the referred norms and their capacity must be authenticated.**

**4.1.** It is our understanding that only the aforementioned documents must comply with this requirement, and that the other documents referred to in the Regulation do not need authenticated signatures.

4.1.1. We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**V. Pursuant to paragraph 2 of article 12 of the Regulation, the envelope cannot include any elements that would allow the applicant to be identified.**

5.1. It is our understanding that, simply the use of opaque envelopes<sup>2</sup> (as specified in paragraph 6 of article 170 of the Public Contracts Code), combined with the absence of elements that would identify the applicant on the exterior of the envelope, ensure the total confidentiality of the contents and, thus, guarantee that there is no possibility of the applicant being identified. Therefore, we believe that the envelope should be opaque.

5.1.1. We would be grateful if you could confirm if our understanding is correct.

**Answer:** It is up to the applicant to decide the best way to guarantee compliance with the requirement in question.

5.1.2. If our understanding is correct, we would be grateful if you could clarify whether the envelope should be in plastic or paper (e.g. white on the outside and black on the inside).

**Answer:** See the answer to the previous question.

**VI. As to the application request itself, it is our understanding that, with regards to the provisions of paragraph 1 of article 12 of the Regulation, as regards content, it should comply with the provisions of the following draft:**

6.1. We would be grateful if you could confirm if our understanding is correct.

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**VII. The introduction of paragraph 1 of article 13 of the Regulation specifies that the documents filed with the application request must be presented in an envelope separate from that of the application request, but this provision omits to mention whether the recipient of the envelope or the reference to the auction application should be included.**

**7.1.** It is our understanding that, as specified in paragraph 2 of article 12 of the Regulation, applicants should present the documents to be filed with the application request in a closed envelope addressed to the Chairman of the Board of Directors of ANACOM with the following note: “Application to the Auction for the Allocation of Frequency Usage Rights in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands – second envelope”.

**7.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

**7.1.2.** If our understanding is not correct, and the envelope that contains the documents to be filed with the application request, in accordance with the introduction of paragraph 1 of article 13 of the Regulation, must be presented with no recipient or mention of the application for the auction, you need to clarify for us whether this blank envelope<sup>3</sup> (meaning with nothing written on it.) and the envelope that contains the application request (as per paragraph 2 of article 12 of the Regulation) should be, in turn, placed in a closed envelope on which the recipient – Chairman of the Board of Directors of ANACOM – is identified and “Application to the Auction for the Allocation of Frequency Usage Rights in the 700 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.6 GHz and 3.6 GHz bands” is written.

**Answer:** See the answers to points 7.1.1 and 3.1.1.

**7.1.3.** If the interpretation set out in point 6.1.1. is incorrect, we would be grateful if you could indicate how we should proceed.

**Answer:** Assuming that this is with regards to point 7.1.1., see the answer to that item.

7.2. Regarding the contents of the declaration to which sub-paragraph (a) of paragraph 1 of article 13 of the Regulation refers, we would be grateful if you could confirm that, as regards content, the declaration presented should comply with the provisions of the following draft:

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**VIII. Pursuant to paragraph 1 of article 14 of the Regulation, “Interested parties may request clarification regarding any doubts arising from the interpretation of any documents forming part of the auction process, within the deadline for submitting applications and up to the eighth day after the start of that period.”**

8.1. It is our understanding that, regarding the provisions of article 49 of the Regulation, the applicants may request clarification about the Regulation (e.g. the application phase) up to and including 23:59 (GMT) of the last working day of the deadline set for presenting applications, that is, up until and including 23:59 (GMT) of 18 November 2020, without prejudice to the suspension of the procedure being declared.

8.1.1. We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**IX. Pursuant to paragraph 4 of article 11 of the Regulation, ANACOM will publish the contents of the requests and clarifications provided, on their website (www.anacom.pt).**

This provision, however, does not mention a date for the aforementioned publishing.

9.1. Therefore, we would like to know the date on which the regulator will publish the clarifications provided on their website.

**Answer:** The publishing will occur as soon as possible.

9.2. It is our understanding that, for reasons of transparency and equality, the publishing of the clarifications provided by the regulator on their website should occur at the same time as the answer is sent to the interested party who made the request for clarification.

9.2.1. We would be grateful if you could confirm if our understanding is correct.

**Answer:** See the answer to question 9.1.

**X. Pursuant to paragraph 3 of article 12 of the Regulation, “The application requests should be delivered to the public service desk at ANACOM’s headquarters, against receipt of delivery, on working days between 9 a.m. and 4 p.m.”**

**10.1.** It is our understanding that the receipt of delivery of the application request will register the receipt of the application with reference to the respective time and date and will be made available by ANACOM (e.g. on paper), so it will not be necessary for the applicant to provide any physical medium for the purpose (e.g. a protocol book).

**10.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XI. Article 13 of the Regulation is imprecise about the deadline and location where the applicant must deliver the envelope with the documents to be filed with the application request.**

**11.1.** It is our understanding that the envelope with the documents and elements to be filed with the application request should be delivered:

**(a)** up until 4 p.m. (GMT) on 27 November 2020, without prejudice to the suspension of the procedure being declared;

**(b)** to the public service desk at ANACOM’s headquarters, located on Avenida José Malhoa, 12, 1099-017 Lisboa, against receipt of delivery to be provided by the regulator.

**11.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XII. Pursuant to sub-paragraph (b) of paragraph 1 of article 13 of the Regulation, the applicant must provide the access code to their permanent certificate.**

However, this provision does not specify the type of permanent commercial registration certificate ANACOM requires for the purpose of qualification as, in this area, there are two types of certificate (<sup>4</sup>: As per information available on the website Justiça.Gov.pt <https://justica.gov.pt/Servicos/Consultar-certidaopermanente-comercial>):

(i) permanent registration certificate; and

(ii) permanent certificate of registration and of documents that served as its basis.

**12.1.** It is our understanding that, for the purposes of qualification, ANACOM requires the permanent registration certificate described in (i) above.

**12.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** We confirm that the Regulation only requires the indication of the access code to the permanent registration certificate described in (i) above.

**12.2.** It is our understanding that the access code to the permanent certificate can be provided by the applicant through a declaration by its legal representatives.

**12.2.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**12.2.2.** If our understanding is correct, we would be grateful if you could confirm whether, as regards content, the declaration should comply with that set out in the draft below:

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**12.2.3.** If our understanding is not correct, we would be grateful if you could clarify how the access code to the requested certificate should be provided.

**12.3.** Sub-paragraph (b) of paragraph 1 of article 13 of the Regulation also specifies that the applicant's permanent certification should be "valid for the auction period, including the issuance of licences".

**12.3.1.** It is our understanding that an access code to the permanent certificate that is valid for a period of 6 months or more, counting from the date of presentation of the applications, can be presented.

**12.3.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** The certificate must be valid throughout the auction period, including the issuance of licences envisaged in article 40 of the Regulation.

**12.3.2.** It is our understanding that what is meant by issuance of licences is the issuance of frequency usage rights attributed as part of this auction, under the terms of article 40 of the Regulation.

**12.3.2.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XIII. Pursuant to sub-paragraph (c) of paragraph 1 of article 13 of the Regulation, the applicant must provide the access code to the permanent certificate of its respective statutes.**

**13.1.** It is our understanding that the access code to the current certificate can be provided by the applicant through a declaration by its legal representatives.

**13.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**13.1.2.** If our understanding is correct, we would be grateful if you could confirm whether, as regards content, the declaration should comply with that set out in the draft below:

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**13.1.3.** If our understanding is not correct, we would be grateful if you could clarify how the access code to the requested certificate should be provided.

**13.2.** Sub-paragraph (c) of paragraph 1 of article 13 of the Regulation also specifies that the permanent certification of the respective statutes should be “valid for the auction period, including the issuance of the licences”.

**13.2.1.** It is our understanding that an access code to the permanent certificate that is valid for a period of 6 months or more, counting from the date of presentation of the applications, can be presented.

**13.2.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** See the answer to question 12.3.1.1.

**13.2.2.** It is our understanding that what is meant by issuance of licences is the issuance of frequency usage rights attributed as part of this auction under the terms of article 40 of the Regulation.

**13.2.2.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** See the answer to point 12.3.2.1.

**XIV. ANACOM requires that the applicant, in order to file the application request, presents a document proving the provision of a guarantee deposit under the terms set in article 10 of the Regulation (as per sub-paragraph [d] of paragraph 1 of article 13 of the Regulation).**

**14.1.** It is our understanding that, according to the provisions in paragraph 2 of article 10 of the Regulation, the document proving the guarantee deposit has been provided, drafted in strict conformity with one of the draft forms in Annex 2 of the Regulation.

**14.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XV.** Sub-paragraph (f) of paragraph 1 of article 13 of the Regulation specifies that the applicant must designate natural persons to bid in its name and on its behalf.

**15.1.** It is our understanding that the declaration referred to in sub-paragraph (f) of paragraph 3 of article 13 of the Regulation, is sufficient, and it is not necessary for the applicant to sign an individual authorisation for each of the natural persons identified in this declaration.

**15.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**15.1.2.** We would be very grateful if you could confirm whether, as regards content, the declaration to be presented should comply with that set out in the draft below:

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**XVI. Pursuant to sub-paragraph (f) of paragraph 1 of article 13 of the Regulation, the copies of the identification documents of the people designated by the applicant should be “simple copies”.**

**16.1.** It is our understanding, regarding this point, that an authenticated copy, that is, one attesting that the copy conforms to the identification document, is not required for this procedure.

**16.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XVII. Pursuant to sub-paragraph (h) of paragraph 1 of article 13 of the Regulation, declarations by the natural persons designated as representatives of the applicant for the purpose of presenting the bid in its name and on its behalf should be presented under the terms of sub-paragraph (f) of paragraph 1 of article 13 of the Regulation.**

**17.1.** It is our understanding that a declaration should be presented for each proposed natural person, instead of a single declaration jointly signed by all the natural persons.

**17.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**17.1.2.** We would be very grateful if you could confirm whether, as regards content, the declaration to be presented should comply with that set out in the draft below:

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**XVIII. Pursuant to paragraph 3 of article 13 of the Regulation, the applicants should expressly indicate the postal and email address to which they wish all communications and notifications under the scope of the auction be sent.**

**18.1.** It is our understanding that a declaration should be presented as proposed below:

**18.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** It is the responsibility of the applicant to formalise the presentation of the application and submission in order to comply with the requirements called for under the terms set out in articles 12 and 13 of the Regulation.

**18.2.** We request that you inform us as to which communications will be sent by physical mail and which communications will be sent by electronic mail.

**Answer:** The communications of the Board of Directors of ANACOM will be assured by the ways specifically envisaged in the Regulation, in each phase of the Auction.

**18.3.** Finally, we request that you inform us if physical mail communications will be sent with acknowledgement of receipt, and if communications sent by electronic mail require acknowledgement of receipt and of reading.

**Answer:** The communications and notifications will be carried out under the terms provided for in the Code of Administrative Procedure.

**XIX. Pursuant to paragraph 3 of article 14 of the Regulation,** *“Within 2 days of the end of the period for the submission of applications, the Board of Directors of ANACOM may request that applicants address shortcomings in their application requests within a period of 3 days, provided that they are remediable and this does not affect the principle of equal treatment among applicants”.*

**19.1.** It is our understanding that potential irregularities in applications may create, specifically, the foregoing of non-essential formalities that need to be corrected, such as the non-delivery of obligatory preliminary documentation under the terms of article 13 of the Regulation. In this case, the shortcomings may be corrected by presenting documents that prove facts or qualities prior to the date the application is presented<sup>5</sup>(as per paragraph 3 of article 72 of the Public Contracts Code).

**19.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** It is up to the Board of Directors of ANACOM to analyse and decide which of the deficiencies discovered in the application request can be corrected, and which should not be considered correctable. The equal treatment among applicants will always be ensured.

**19.2.** Also regarding this provision of the Regulation, we would be very grateful if you could:

**19.2.1.** Clarify in which way (i.e., by physical or electronic mail) the applicants will be notified to correct any possible irregularities; and

**Answer:** Applicants will be notified electronically or by official memorandum, to the addresses indicated under the terms of paragraph 3 of article 13 of the Regulation.

**19.2.2.** Can you confirm that the 3-day deadline should be calculated from the day after the ANACOM communication is received, i.e. if the applicant receives the communication on day 1 (working day) and days 2, 3 and 4 are also working days, the applicant will have up to and including day 4 to correct the deficiencies mentioned?

**Answer:** As provided for in article 49 of the Regulation, the calculation of the time limits therein are also subject to the rules of article 87 of the Code of Administrative Procedure, and therefore, the calculation of the 3-day period does not include the day on which the notification occurs.

**XX. It is our understanding that, for purposes of exercising the legally-provided right to comment in a prior hearing, regarding decisions on the acceptance or exclusion of applications, referred to in article 15 of the Regulation, and with a view to full compliance with the principles of transparency and competition, the applicants will have access, if they so wish, to all the applications presented by the other applicants.**

**20.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is not correct.

**20.1.2.** If our understanding is incorrect, we would be very grateful if you could clarify for us how the aforementioned rules and principles applicable to the auction will be complied with.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process as provided for in paragraph 1 of article 11 of the Regulation.

**XXI. Pursuant to paragraph 1 of article 15 of the Regulation, “It is the responsibility of the Board of Directors of ANACOM to decide on the acceptance or exclusion of applications.”, however the date of the decision in question is omitted.**

**21.1.** It is our understanding that the acceptance or exclusion of applications should occur within the period envisaged for the analysis of applications, in other words, the period of 6 working days, counting from the end of the period for presenting applications (as per paragraph 1 of article 14 of the Regulation).

**21.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**21.2.** Finally, we would be very grateful if you could indicate whether the respective notification will be made by physical and/or electronic mail.

**Answer:** In compliance with paragraph 3 of article 15 of the Regulation, the notification will be done through official memorandum or electronic means.

**XXII. Pursuant to paragraph 3 of article 15 of the Regulation, the decision on the exclusion or acceptance of the applications “(...) shall be immediately notified to the applicants, either by official memorandum or by electronic means.”.**

**22.1.** It is our understanding that this immediate notification to the applicants must occur up until the last day of the deadline the regulator has to make a decision on the admission or exclusion of applications or, at the latest, the working day immediately after.

**22.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**XXIII. It is also our understanding that, for purposes of exercising the legally provided right to comment in a prior hearing, regarding decisions on the acceptance or exclusion of applications, and with a view to full compliance with the principles of transparency and competition, all the applicants, whether excluded or accepted, will be notified by the Board of Directors of ANACOM of the decision to accept all the other applications accepted, and they will also be given the right to a prior hearing of interested parties provided for in article 121 et seq. of the Code of Administrative Procedure, on the decisions to accept the other applications.**

**23.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is not correct.

**23.2.** If our understanding is incorrect, we would be very grateful if you could clarify for us how the aforementioned rules and principles applicable to the auction will be complied with.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process as provided for in paragraph 1 of article 11 of the Regulation.

**XXIV. Pursuant to paragraph 5 of article 15 of the Regulation, the Board of Directors of ANACOM will notify accepted applicants of the following information: a) The date of the start of the bidding phase for new entrants, or, if this does not take place, the date of the start of the main bidding phase, which shall take place no earlier than seven days after notification; and b) Conditions for accessing the electronic platform and using the alternative means, as referred to in paragraphs 3 and 4 of article 17 and in paragraphs 3 and 4 of article 25, including the date, time and place for carrying out the face-to-face**

**training on the use of the electronic platform or, if it is done remotely, the link to access the training. Additionally, it is stated in paragraph 8 that “notwithstanding the notifications [referred to in the preceding article mentioned], the Board of Directors of ANACOM shall not disclose, at this stage, their content”.**

However, it is not clear in this paragraph whether information is provided regarding:

- a) The identity of the candidates admitted to each of the phases, or
- b) The number of candidates admitted to each stage.

**24.1.** We therefore request that you clarify whether the information referred to in points a) and b) will be provided.

**Answer:** The information referred to in points a) and b) will not be provided.

**24.2.** If this is not the case, we would be grateful if you could explain how the rules and principles of transparency, competition and participation mentioned above, applicable to the auction, will be complied with.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process as provided for under the terms of paragraph 1 of article 11 of the Regulation.

**XXV. Pursuant to sub-paragraph (a) of paragraph 5, and paragraph 7 of article 15 of the Regulation, if the bidding phase for new entrants is not carried out, the start of the main bidding phase will not occur before the seventh day following notification of the decision on the acceptance of applications.**

**25.1.** If the bidding phase for new entrants is carried out, the provisions of paragraph 4 of article 24 of the Regulation will apply, which does not establish either the deadline for ANACOM to notify bidders of the start date of the main bidding phase or the period of prior notice of its start.

**25.1.1.** We would be very grateful if you could clarify the applicable period(s) of prior notice in this situation and whether it should be counted in working days.

**Answer:** In accordance with the provisions of article 24 of the Regulation, bidders will be notified with adequate notice of the start date of the main bidding phase. With respect to prior

notice, in accordance with paragraph 2 of article 27, bidders shall be notified of the start of each round, at least 15 minutes in advance..

## **B. TRAINING**

**XXVI. With regard to the training provided for in sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, we need to ask the regulator the following questions:**

**26.1.** It is our understanding that the training action will take place – in relation to all candidates – within 2 working days of the notification made under article 15 of the Regulation, to enable the candidates to have some time to prepare before the bidding itself.

**26.1.1.** We ask that you confirm our understanding of the deadline for carrying out the training action.

**Answer:** Under the terms provided for in sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, the accepted candidates will be notified of the date for conducting the training, and the bidding phases will not take place before the seventh day following the notification. The start date of the bidding phase will, naturally, take into account the scheduling of training actions.

**26.1.2.** If this is not the case, we request that you let us know the minimum period for the training action in relation to the bidding phase.

**Answer:** See the answer to the previous question.

**26.2.** What is the duration of the training sessions envisaged in this provision?

**Answer:** The training actions will be of adequate duration to present the platform and the alternative means, as well as to clarify questions posed by the bidders.

**26.3.** Can more elements attend, other than the six representatives designated by the candidate in the declaration referred to in sub-paragraph (f) of paragraph 1 of article 13 of the Regulation?

**Answer:** No. Only the persons indicated in the declaration provided for in sub-paragraph (f) of paragraph 1 of article 13 of the Regulation, who are specifically designated to submit bids in the name of and on behalf of the bidder, may attend.

**26.4.** What is the maximum number of participants per bidder in these training sessions?

**Answer:** See the answer to the previous question.

**26.5.** Are the applicant's Legal Representatives (Administrators) required to attend the training session on the electronic platform?

**Answer:** No.

**26.5.1.** Assuming the attendance of the Legal Representatives (Administrators) is mandatory, if one (or several) of the candidate's Legal Representatives cannot attend the training session on the electronic platform, must they be represented by proxies?

**Answer:** See the answer to the previous question.

**26.5.1.1.** If the answer to the previous question is affirmative, we need to ask whether the power of attorney to be presented for that purpose requires any specific formality. If so, which formality?

**Answer:** See the answer to the previous questions.

**26.6.** Will ANACOM provide contacts (telephone and email address) for clarifying doubts about the use of the electronic platform?

**Answer:** In the bidding phases, communication is only carried out through the electronic platform and the alternative means, under the terms specifically provided for in the Regulation. The platform does not include the functionality of bidirectional communication.

Bidders will be provided with a manual regarding the platform, which will be sent as an annex to the notification by ANACOM's Board of Directors provided for in article 15 of the Regulation.

**26.6.1.** If the answer to the previous question is negative, does it become necessary for ANACOM to inform bidders on how they can clarify any doubts or constraints, and fully understand the operation of the platform during the auction, in addition to the aforementioned training sessions?

**Answer:** See the answers to points 26.2. and 26.6.

**26.7.** It is our understanding that, in compliance with the principles of equality and transparency, ANACOM will share with all the bidders any clarifications provided both during and after the training on the use of the platform, and that these clarifications will be provided at least 2 working days before the auction.

**26.7.1.** We would be very grateful if you could confirm whether our understanding is correct, and inform us of the means by which these clarifications will be made available to the applicants accepted for the auction.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the powers entrusted to ANACOM's Board of Directors, provided for in article 4 of the Regulation, are highlighted.

**26.7.2.** If our understanding is incorrect, we would be very grateful if you could inform us of the regulator's understanding about this matter.

**Answer:** See the answer to the previous question.

## **C. PLATFORM**

**XXVII. With regard to the electronic platform provided for in sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, and assuming that the electronic platform is made available by ANACOM, the following questions arise:**

**27.1.** Is there a limit, per bidder, on the number of computers that can access the platform? If so, what is it?

**Answer:** See the answer to the next question.

**27.2.** Will there be a single pair consisting of a username and password for each bidder, or will there be one for each of the six persons indicated by the applicant to submit bids in its name and on its behalf (as per sub-paragraph [f] of paragraph 1 of article 13 of the Regulation)?

**Answer:** In accordance with the provisions of article 13 of the Regulation, the applicant must identify up to six legal representatives to submit bids in its name and on its behalf, to whom the respective authentication elements will be provided.

**27.3.** Are bidders allowed to consult/access the electronic platform after the auction ends?

**Answer:** The platform will remain available until the steps taken pursuant to article 35 of the Regulation are concluded.

**27.3.1.** If so, for how long will this access continue?

**Answer:** See the answer to the previous question.

**27.4.** Will all the accesses granted to the bidder allow bids to be submitted, i.e. with Read/Write privileges, or will the access be “passive” and only allow read permissions?

**Answer:** See the answers to points 26.2. and 26.6.

**27.5.** In addition to the natural persons indicated by the applicant who can bid on its behalf, could there be other users of the platform?

**Answer:** In accordance with the provisions of article 13 of the Regulation, the applicant must identify up to six legal representatives to submit bids in its name and on its behalf, to whom the respective authentication elements will be provided.

**27.6.** How many users can simultaneously access the platform?

**Answer:** See the answer to the previous question.

**27.6.1.** With which (Read/Write) privileges?

**Answer:** See the answers to points 26.2. and 26.6.

**27.7.** If platform users are inactive during a specific session, will there be a time-out period, after which the user concerned will have to re-validate their platform access credentials?

**27.7.1.** If so, what period of inactivity will result in a time-out?

**Answer:** See the answers to points 26.2. and 26.6.

**27.7.1.1.** Will there be any warning message to the user regarding this?

**Answer:** See the answers to points 26.2. and 26.6.

**27.8.** Can the bidder find out who has an active session (“is logged in”) on the platform on its behalf (only applicable if multiple users are authorised)?

**Answer:** See the answers to points 26.2. and 26.6.

**27.9.** Since, essentially, the auction is held via an Internet connection, where do the bidder's responsibility for ensuring the connection begin and end, and therefore, under what terms and conditions is the regulator responsible for ensuring this connection is maintained?

**Answer:** ANACOM clarifies that, under the terms of article 25 of the Regulation, it is not responsible for technical problems attributable to the bidder's communications equipment or systems. Depending on the problem and its severity, the Board of Directors of ANACOM, under the terms of article 4, will analyse and make decisions, always with the aim of resolving the situation as quickly as possible, in order to allow the auction to run normally, thereby defending the interests of all bidders. It should be remembered with respect to this, that it was decided that, in the event of a technical problem with the operation of the platform, alternative means could be used, that comply with the rules established for the auction.

**27.9.1.** By analogy, law no. 96/2015 of 17 August applies – Does it regulate the availability and use of Electronic Platforms for Public Procurement?

**Answer:** See the answer to the previous question.

**27.10.** What are the technical parameters (e.g. connection speed) that should be minimally guaranteed by the bidder, to ensure adequate and continuous access to the platform?

**Answer:** See the answers to points 26.2. and 26.6.

**27.11.** With regard to authentication, will there be digital certification from the server (from the Entity that manages the platform) or also from ANACOM? If so, how many licenses/certificates will be made available per bidder? And what type of digital certificate (qualified or otherwise) will be required?

**Answer:** See the answers to points 26.2. and 26.6.

**27.12.** Is there any additional validation mechanism in the bidding?

**Answer:** See the answers to points 26.2. and 26.6.

**27.12.1.** If the answer is affirmative, what type of mechanism?

**Answer:** See the answers to points 26.2. and 26.6.

**27.12.2.** How is it made available? And in what quantities (e.g. is one used throughout the auction or will it be daily or per round)?

**Answer:** See the answers to points 26.2. and 26.6.

**27.12.3.** What will be the type of support (physical or logical)?

**Answer:** See the answers to points 26.2. and 26.6.

**27.13.** Will there be any type of additional authentication aside from username and password? For example, computer IP authentication?

**Answer:** See the answers to points 26.2. and 26.6.

**27.13.1.** If the answer to the previous question is affirmative, it is important to know how many devices can access the electronic platform.

**Answer:** See the answer to question 27.5.

**27.14.** Will technical support contacts (helpdesk) that can be used before and during the auction be provided?

**Answer:** See the answers to points 26.2. and 26.6. The platform does not include the functionality of bidirectional communication.

**27.14.1.** If the answer to the previous question is negative, for the auction to function properly, ANACOM needs to indicate the support mechanisms, as well as the treatment and resolution of any issues during the auction.

**Answer:** See the answer to question 27.9.

## **D. BIDDING PHASE**

**XXVIII. The following questions need to be asked regarding the holding of the auction and communication with the regulator during the auction:**

**28.1.** How is regular communication ensured between the bidder and the entity that manages the auction – the Board of Directors of ANACOM (as per paragraphs 5 and 6 of article 27 of the Regulation)?

**Answer:** In the bidding phases, communication is only carried out via the electronic platform and the alternative means, under the terms specifically provided for in the Regulation.

**28.2.** Can the increase in the duration of each round, provided for in paragraph 5 of article 27 of the Regulation, only occur before the start of the round in question?

**Answer:** No.

**28.2.1.** If so, how far in advance of the start of the round will this increase be communicated to the bidder?

**28.3.** Can the increase in the duration of each round, provided for in paragraph 5 of article 27 of the Regulation, occur superveniently (i.e. while the round in question is occurring)?

**Answer:** Yes.

**28.3.1.** If so, will the bidder be notified of this increase in the duration of the current round as soon as the technical circumstance that requires the increase occurs?

**Answer:** The extension of the round will be notified with adequate advance notice.

**28.3.1.1.** If the answer to the previous question is negative, at what point in the ongoing round will this notification be made to the bidder?

**28.4.** Can a round that has been extended, under the terms of paragraph 5 of article 27 of the Regulation, end after 6 p.m. (GMT), as provided for in paragraph 1 of article 27 of the Regulation?

**Answer:** The rounds take place between 9 a.m. and 6 p.m.

**28.5.** What is the maximum period within which the Board of Directors of ANACOM will respond to questions submitted by bidders in the bidding phase?

**Answer:** See the answer to question 26.6.

**28.6.** After submitting a bid, is it possible for the bidder to change it if the round has not yet ended?

**Answer:** No.

**28.7.** Does the electronic platform issue any report/notification of the bid made?

**Answer:** See the answers to points 26.2. and 26.6.

**28.7.1.** If so, is it possible for the bidder to export this report/notification to its internal archives, and when?

**Answer:** See the answers to points 26.2. and 26.6.

**28.7.2.** What is the format of the exported file?

**Answer:** See the answers to points 26.2. and 26.6.

**28.7.3.** How long will reports/notifications remain available on the electronic platform?

**Answer:** See the answers to points 26.2., 26.2. and 27.3.

**28.8.** How will bidders know that the bid has actually been accepted by the system and duly submitted?

**Answer:** See the answers to points 26.2. and 26.6.

**28.9.** Does the electronic platform issue any report/notification when the waivers are triggered?

**Answer:** See the answers to points 26.2. and 26.6.

**28.10.** In the event of situations of force majeure<sup>6</sup> (as per the provisions of sub-paragraph [d] of paragraph 2 of article 4 of the Regulation) affecting a single bidder, will this have the effect of suspending the auction for everyone?

**Answer:** Depending on the problem and its severity, the Board of Directors of ANACOM, under the terms of article 4, will analyse and make decisions, always with a view to resolving the situation as swiftly as possible, in order to allow the auction to run normally, thereby defending the interests of all bidders.

**28.11.** Can a round of the main bidding phase start after 5 p.m. or must each day of the auction end at 6 p.m.?

**Answer:** See the answer to question 28.4.

**28.12.** Is it possible to export information from the electronic platform to Excel, specifically, the results of each round after they are made available to bidders?

**Answer:** See the answers to points 26.2. and 26.6.

**28.12.1.** If the answer to the previous question is affirmative, what is the format of the export file and when will it be made available?

**Answer:** See the answers to points 26.2. and 26.6.

**28.13.** Given the amount of spectrum available in the auction and the different categories to be allocated, could the auction be extended for dozens or hundreds of rounds if the price increases indicated in paragraph 1 of article 30 of the Regulation are maintained?

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation.

**28.14.** Is ANACOM considering the possibility of taking action to review, alter or prevent the possibility of bidding using the lower increase levels?

**Answer:** See the answer to the previous question.

**28.14.1.** In this context, how will ANACOM act, how will bidders be notified, and how far in advance?

**Answer:** See the answer to question 28.13.

**28.15.** The applicant's team (e.g. the six people referred to in sub-paragraph [f] of paragraph 1 of article 13 of the Regulation) who are participating in the auction, assuming their full participation in it (as per paragraph 6 of article 25 of the Regulation), must be together in the same physical space, prepared (e.g. with technical/IT support) by the applicant for the purpose.

**28.15.1.** We would be very grateful if you could confirm if our understanding is correct.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process as provided for under the terms of paragraph 1 of article 11 of the Regulation.

**28.15.2.** If our understanding is not correct, we would be very grateful if you could clarify the reasons (in fact and in law) that preclude our understanding.

**Answer:** See the answer to the previous question.

## **D.1. ALTERNATIVE MEANS**

**XXIX. With respect to the use of alternative means provided for in sub-paragraph (b) of paragraph 5 of article 15 of the Regulation, we must ask the regulator the following questions:**

**29.1.** Taking into account the provisions of paragraphs 5 of articles 17 and 25 of the Regulation, the alternative means involves the use of telephone communication. Should it be understood that this is a voice phone call?

**Answer:** This understanding is correct.

**29.2.** When, how, and in what form will ANACOM make the rules governing the alternative means available?

**Answer:** Under the terms of sub-paragraph (b) of paragraph 5 of article 15, bidders will receive, among other information, the conditions of use for alternative means. The training activity to be held by ANACOM is specifically intended to convey the operational procedures related to its use, in the event of technical failure by the platform.

**29.3.** What information should be transmitted through this means, either by the bidder or by ANACOM?

**Answer:** See the answer to question 29.2.

**29.3.1.** How will this information be made available and in what format?

**Answer:** See the answer to question 29.2.

**29.4.** Will ANACOM ensure that the level of information that will be provided through the alternative means will be the same as the one made available through the platform (e.g. the best offers for the various lots to be auctioned)?

**Answer:** Yes.

**29.5.** Is there a specific form (template) for bidding submission?

**Answer:** See the answer to question 29.2.

**29.5.1.** If so, on what date will the aforementioned template be made available and what information will be requested?

**Answer:** See the answer to question 29.2.

**29.6.** Will the bidder have to nominate only one person to use the alternative means or can everyone who has access to the electronic platform use this means?

**Answer:** Without prejudice to the answer to question 29.2, it should be noted that the persons designated by the applicant to bid in its name and on its behalf will have access to the electronic platform and the alternative means.

**29.7.** Assuming that the alternative means will consist of a voice telephone call, will ANACOM provide several telephone numbers for the purpose of accessing the alternative means?

**Answer:** See the answer to question 29.2.

**29.8.** Assuming that the alternative means will consist of a voice telephone call, will the recordings of the voice telephone calls referred to in sub-paragraph (h) of paragraph 1 of article 13 of the Regulation be made available by ANACOM to the other bidders?

**Answer:** Transcripts of the calls with regard to the specific bids submitted by each applicant will appear in the auction report, in the same way as records from the electronic platform proving that the bids were submitted through it, without prejudice to access to these recordings under legally permitted terms.

**29.8.1.** If so, how, in what form, and at what time will the recordings be made available?

**Answer:** See the answer to the previous question.

**29.9.** Will ANACOM provide other alternative means?

**Answer:** No.

**29.10.** Assuming that the alternative means will consist of a voice telephone call, in the event that it is objectively impossible for all persons designated by the applicant to submit bids on its behalf at the auction, will it be possible to communicate through another person(s) to be appointed during the bidding phase?

**Answer:** Under the terms of article 13 of the Regulation, only the representatives designated by the applicant may bid in the auction, and this applies regardless of the means by which it is done.

**29.12.** Will the people designated by the applicant to bid on its behalf be able to communicate in English?

**Answer:** No.

**29.13.** Will ANACOM request a list of telephone numbers or other means by which bidders may submit bids on behalf of the applicant?

**Answer:** See the answer to question 29.2.

**29.14.** In the same round, will it be possible to send bids simultaneously through the electronic platform and the alternative means?

**Answer:** No.

**29.15.** The team of an applicant participating in the auction (e.g. the six people referred to in sub-paragraph [f] of paragraph 1 of article 13 of the Regulation), assuming their full participation in it (as per paragraph 6 of article 25 of the Regulation), must obligatorily be together in the same physical space, equipped by the applicant for the purpose.

**29.15.1.** We would be very grateful if you could confirm if our understanding is correct.

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process as provided for in paragraph 1 of article 11 of the Regulation.

**29.15.2.** If our understanding is not correct, we would be grateful if you could clarify the reasons (**in fact and in law**) that preclude our understanding.

**Answer:** See the answer to the previous question.

## **D.2. ROUNDS**

**XXX.** With regard to the rounds, we need to ask you the following questions:

**30.1.** It is understood that the auction may end in the first round in which a 100% level of activity is required, provided that, in this round, the other criteria indicated in paragraph 1 of

article 32 of the Regulation are met (i.e. if, in addition to the activity level of 100%, there were no bids for any of the lots and no waivers were triggered).

**30.1.1.** We would be grateful if you could confirm if our understanding is correct.

**Answer:** This understanding is correct.

**30.2.** What are the objective criteria that ANACOM will observe in order to make a change in the level of activity required in a given round, as provided for in paragraph 9 of article 26 of the Regulation?

**Answer:** The Board of Directors of ANACOM will determine increases in activity levels, taking into account the objective of ensuring a balance between the need to allow bidders to effectively adjust their expectations in line with the information being provided on evolving demand, and the need to avoid the auction going on too long without clear benefits for the process.

### **D.3. WAIVERS**

**XXXI. With regard to waivers, we need to ask you the following questions:**

**31.1.** Under the terms of paragraph 2 of article 28 of the Regulation, "(...) the waivers shall be considered activated where the bidder does not submit any bid in one round (...)", without discriminating the circumstances and reasons on which this non-submission of bidding may be based.

**31.1.1.** Therefore, it is important to ask the following question: if, in a given round, a bidder has no need to make new bids (because it has the best offers it wants), is it necessary for that bidder to make at least one bid, so that it is not considered to have used a waiver?

**Answer:** Waivers are only activated where the bidder does not submit any bid, losing eligibility points for that reason. If the eligibility points that it must use in a given round, taking into account the required activity level, are associated with the lots in which it holds the best offers, the non-submission of a bid does not imply the loss of eligibility points and, as such, does not activate a waiver. Otherwise, failure to submit a bid implies the loss of eligibility points and, as such, a waiver is activated.

#### **D.4. NEW ENTRANTS**

**XXXII. Regarding the bidding phase for new entrants, we need to ask you the following questions:**

**32.1.** Will bidders not classified by ANACOM as “new entrants” be informed of the start date of the bidding phase for new entrants at the same time as the new entrants?

**Answer:** Yes.

#### **E. SPECTRUM - CATEGORIES H and I**

**XXXIII. Regarding the H and I spectrum categories, without prejudice to the expiry or revocation of the Frequency Usage Right (FUR) of Dense Air, we must ask the following questions:**

**33.1.** In point H and I of the table in paragraph 1 of article 7 of the Regulation, it is stated that the spectrum is available with restrictions in certain regions (in category H with restrictions in regions 1 to 8 until 2025, and in category I in regions 1 to 2 until 2025). Does this mean that the spectrum in the remaining regions will be available for use when issuing FURs related to the Auction?

**Answer:** Yes.

**33.2.** When should the deposit for payment to acquire category H and I frequencies be made? When issuing the licence, or when there cease to be restrictions on its use?

**Answer:** In accordance with article 38 of the Regulation, the deposit is made within 10 days of receiving notification of the allocation of frequency usage rights referred to in paragraph 3 of article 37.

**33.3.** If entities to which frequency usage rights were allocated in the bands subject to restrictions (categories H and I), will they have options for deferring payment other than those provided for in paragraphs 3 to 6 of article 38 of the Regulation?

**Answer:** No.

If the entities to which the frequency usage rights are allocated choose to defer payment, will they still have to pay 50% of the final amount of these rights within 10 working days of the

deadline for receiving the communication referred to in paragraph 3 of article 37 of the Regulation, pursuant to paragraph 1 of article 38 of the Regulation?

**Answer:** Yes.

**33.4.** Under the terms of sub-paragraph (b) of paragraph 5 of article 45 of the Regulation, beneficiaries of the obligation envisaged in the aforementioned provisions, shall be the bidders that "(...) do not have [at the date the Regulation enters into force] rights of use of frequencies in the bands designated for terrestrial electronic communications services and that, at the end of the auction, shall have frequency usage rights."

**33.4.1.** In the event that a bidder only acquires spectrum in categories H and I, can it benefit from the access obligation immediately, or only when restrictions on acquired rights are lifted (5 August 2025), similarly to what will be applied in paragraph 10 of article 43 of the Regulation?

**Answer:** It can immediately benefit from the network access obligation.

## **F. Assignment Phase**

**XXXIV. Within the scope of the face-to-face meeting provided for in paragraph 5 of article 35 of the Regulation, which is intended for the choice by bidders, of the lots allocated in the bidding phase, we must ask the following questions:**

**34.1.** At this meeting, on the one hand, can the bidder's representatives, indicated in the declaration provided for in sub-paragraph (f) of paragraph 1 of article 13 of the Regulation, be present, and, on the other hand, can any other representatives that the bidder specifically designates for this purpose (or can these representatives be accompanied by other people)?

**Answer:** The face-to-face session referred to in paragraph 5 of article 35 of the Regulation must be attended by the representatives the applicants designate for this purpose, and must be accompanied by a representation document, with sufficient powers to enter into binding commitments, in the legally prescribed terms.

The declaration provided for in sub-paragraph (f) of paragraph 1 of article 13 of the Regulation serves exclusively to qualify the persons designated therein to submit bids in the name of and on behalf of the applicant.

**34.1.1.** If the presence is permitted of representatives that the bidder has designated only for this purpose, who are not indicated in the declaration provided for in sub-paragraph (f) of

paragraph 1 of article 13 of the Regulation, will it be necessary to adopt some type of specific formality (namely, filling out a declaration in terms similar to that provided for in sub-paragraph [f] paragraph 1 of article 13 of the Regulation)? If so, which formality?

**Answer:** See the answer to the previous question.

**34.2.** Following the process of ordering winning bidders provided for in paragraph 3 of article 35 of the Regulation, can bidders choose the exact location of the lots won without any restrictions?

**Answer:** In accordance with the provisions of paragraph 8 of article 35 of the Regulation, the choices are validated, batch by batch, by the Board of Directors of ANACOM to maximise the contiguity of the spectrum.

**34.3.** There are constraints in the process of choosing the exact location of the lots won (e.g. guarantee of spectrum contiguity between bidders), and it is expected that bidders will try to hold frequency usage rights in the same bands (e.g. at 3.6 GHz, if the set of lots acquired by a bidder is distributed over band 42 – 3400-3600 MHz – and band 43 – 3600-3800 MHz – this could lead to significant inefficiencies in network implementation). In view of this, how does ANACOM intend to articulate the ordering with the potential spectrum inefficiencies that may arise from the allocation of lots in different bands to the same bidder?

**Answer:** See the answer to the previous question.

**34.4.** Given that the assignment of the spectrum in the 900 MHz frequency band obeys a specific regime provided for in article 39 of the Regulation, do the lots acquired in this band compete for the application of the criteria presented in paragraph 3 of article 35 of the Regulation? In other words, in the assignment of the spectrum in the 3.6 GHz frequency band, is the number of lots acquired in the 900 MHz frequency band relevant as a criterion for the ordering of bidders?

**Answer:** Yes.

**34.4.1.** If the answer to this question is affirmative, will the acquisition of a 2x1MHz lot in the 900 MHz frequency band be worth the same as a 2x5MHz lot in the same band, in the application of the various criteria defined in paragraph 3 of article 35 of the Regulation?

**Answer:** In applying the criteria of sub-paragraphs (b) and (c) of paragraph 3 of article 35 of the Regulation, the lots in question will carry the same weight.

## **G. Assignment process for the 900 MHz band**

**XXXV. With regard to the consignment process for the 900 MHz band provided for in article 39 of the Regulation, it is important to ask the following questions:**

**35.1.** If the contiguity of the 900 MHz frequency band with spectrum whose allocation was earlier than that of the current auction is not ensured, or if it is necessary to redistribute the spectrum in this band, when will this occur (7: As provided for in article 39 of the Regulation) is there a prior hearing on ANACOM's decision provided for in paragraph 5 of article 39 of the Regulation?

**Answer:** Pursuant to paragraph 3 of article 39 of the Regulation, the entities referred to there must agree with each other, within the period established therein, the exact location of the spectrum in the 900 MHz frequency band. After 30 days, in the absence of an agreement, it is up to ANACOM to decide on the redistribution of the spectrum in question, at the end of the prior hearing referred to in paragraph 5 of article 39 of the Regulation.

**35.2.** What is the maximum period for ANACOM to approve the 900 MHz frequency band redistribution agreement to be chosen by the winners (as per paragraph 4 of article 39 of the Regulation)?

**Answer:** A maximum period for the approval decision by ANACOM is not defined.

**35.3.** Are the FUR emission processes in the 900 MHz frequency band independent from the FUR emission processes for the remaining frequency bands? Likewise, will the approval of the agreement affect the date of issue of the FURs for the other frequencies allocated in the auction?

**Answer:** In accordance with the provisions of paragraph 1 of article 40 of the Regulation, the process of issuing frequency usage rights in the 900 MHz band does not affect the process of issuing frequency usage rights in the other bands.

**35.3.1.** If the answer is affirmative, what is the maximum time limit for issuing the FUR for the 900 MHz bands in relation to the date of the deposit?

**Answer:** Under the terms of paragraph 2 of article 40 of the Regulation, licences are issued within 20 days after the approval of the agreement provided for in paragraph 4 of article 39 or after the decision referred to in paragraph 5 of the same article.

**35.3.2.** Or will the processes for issuing FURs in the 900 MHz frequency band be independent of the processes in the remaining frequency bands?

**Answer:** See the answer to the two previous questions.

## **H. Deposit**

**XXXVI.** It follows from the provisions of paragraphs 8 and 9, of article 38 of the Regulation, that in year N, a spectrum holder who intends to pay the instalments due in full may do so, with the remaining instalments updated at the annual discount rate of 4.786%. As an example, a winner of frequency usage rights acquired in the bands provided for in paragraph 3 of article 38 of the Regulation, that has to pay 15 million euros for those rights, may then defer the payment of 7.5 million euros for 7 years. If, in year 2, it wants to anticipate the payment of the remaining instalments, will it have to pay a total amount, rounded up to tens of thousands, of 5.71 million euros?

**Answer:** It is confirmed that the amount to be paid, considering the example and assumptions indicated, would be as shown.

## **I. Issuing the FURs**

**XXXVII.** Regarding the issuance of frequency usage rights, we must ask you the following questions:

**37.1.** Will the FUR be issued sequentially and according to the fulfilment of the deposit obligation (i.e. 20 working days after the deposit is made) or will the FUR of all winners be issued simultaneously?

**Answer:** The license will be issued within the period established in paragraph 1 of article 40. The Regulation does not establish a rule for simultaneous issuance.

**37.2.** What is the maximum period for issuing FURs in relation to the date of the deposit provided for in article 38 of the Regulation, including the period of the prior hearing provided for in paragraph 5 of article 40 of the Regulation?

**Answer:** The maximum period depends on the duration of the prior hearing that is set for this purpose, during which the counting of the period for issuing FUR allocation licences is suspended.

## **J. Conditions Associated with the Frequency Usage Rights**

**XXXVIII. With regard to this matter, we must ask you the following questions:**

**38.1.** Will an entity entitled to use national roaming agreements have the right to request and enjoy national roaming agreements with the various operators that are required to provide such access?

**Answer:** Yes.

**38.2.** If the intervention of ANACOM is requested, as envisaged in paragraph 17 of article 45 of the Regulation, can the forms and decisions resulting from that intervention differ if an MVNO agreement or a National Roaming agreement is being negotiated? Can this intervention by the regulator differ, depending on the type of agreement to be negotiated?

**Answer:** ANACOM's intervention will depend on the specific circumstances associated with each of the situations.

**K. CONTIGENCY PLAN**

**XXXIX. In view of the state of pandemic that the country is currently experiencing, it is, therefore, also important to ask you the following questions:**

**39.1.** Is there any contingency plan envisaged by ANACOM that includes the possibility that the regulator's or bidders' teams could be affected by an outbreak?

**Answer:** This question does not constitute a doubt arising from the interpretation of documents forming part of the auction process under the terms of paragraph 1 of article 11 of the Regulation. In any case, the Regulation contains provisions allowing ANACOM's Board of Directors to make the decisions that are most appropriate, at any time, for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (as per article 4 of the Regulation), and they will be announced within the time limits and by the means considered most appropriate.

**39.1.1.** If so, on what terms and when will it be published?

**Answer:** See the answer to the previous question.

**39.2.** If, due to measures in force now or in the future, as part of the fight against COVID-19, the bidder is prevented from participating in the auction, specifically, because they cannot ensure that all the persons designated to represent them in the auction will be present in the same physical space, specially prepared for full participation in it (e.g. equipped with the

necessary technical and/or computer support), it is our understanding that this situation will constitute a reason of force majeure under the terms of sub-paragraph (d) of paragraph 2 of article 4 of the Regulation.

**39.2.1.** We would be very grateful if you could confirm whether our understanding is correct.

**Answer:** This is a matter subject to analysis and a case-by-case decision by the Board of Directors of ANACOM, in the exercise of the powers vested in it by article 4 of the Regulation..

**39.2.2.** In the event that our understanding is incorrect, we would be very grateful if you would inform us how to proceed and the reasons (in fact and in law) that preclude our understanding.

**Answer:** See the answer to the previous question.

**39.3.** Given that, pursuant to article 5-A of Decree-Law No. 79-A/2020, of 1 October, as amended by Decree-Law No. 94-A/2020, of 3 November, mandatory teleworking has been decreed, affecting the vast majority of workers working in Lisbon, and that the spread of the pandemic in the municipality does not allow us to foresee with certainty the moment when in-person working will be resumed, it is our understanding that communications and/or notifications that, under the terms of the Regulation, should be sent by post or by protocol, will also be sent by email.

**39.3.1.** We would be very grateful if you could confirm whether our understanding is correct.

**Answer:** Pursuant to paragraph 3 of article 13 of the Regulation, applicants must expressly indicate the postal and email address to which they want all communications and notifications in the scope of the auction to be sent. The Board of Directors of ANACOM will comply with the legal framework that, at any given moment, prevails in the context of the pandemic.

**39.3.2.** If our understanding is incorrect, we would be very grateful if you could inform us as to how ANACOM plans to ensure that, while the teleworking regime is in force, there will be no failure of communication when they must be sent by post or protocol.

**Answer:** See the answer to the previous question.

## **L. INDICATIVE TIMETABLE**

**XL.** In view of the deadlines contained in the Regulation, as well as the indicative timetable published by ANACOM on its website, to ensure the transparency of the procedure, it is important to request that you confirm the timetable described below.

**We note that any dates referred to in this document result merely from the interpretation made of the wording of the Regulation, without prejudice, therefore, to other dates that result from the suspension of the procedure that may be declared.**

**TIMETABLE IN WORKING DAYS (in accordance with article 49 of the Regulation)**

- Entry into force of the Regulation: 6 November 2020;
- Deadline for submitting a request for clarification: 18 November 2020 (8 working days after the entry into force of the Regulation);
- Deadline for the regulator to respond to requests for clarification: maximum of 3 working days (from the date of receipt of the request for clarification submitted by the applicant);
- Deadline for submission of applications: 27 November 2020 (15 working days after the entry into force of the Regulation);
- Deadline for the regulator to request the correction of shortcomings found in the application requests: 2 December 2020 (2 working days after the deadline for submission of applications);
- Deadline for applicants to correct the shortcomings in applications: 4 or 7 December 2020 – depending on the date of notification to the applicant (3 working days after the notification to take place on 30 November or 2 December);
- Deadline for verification by the regulator of compliance with the application requirements: 9 December 2020 (6 working days after the deadline for submission of applications);
- Deadline for the regulator's decision on the acceptance or exclusion of applications:
- Immediately (paragraph 3 of article 15 of the Regulation) after 6 working days have elapsed since the deadline for submitting applications (paragraph 1 of article 14 of the Regulation) – 9 or 10 December;
- Exclusion notification (if applicable): the regulator must grant a period for a prior hearing of not less than 10 working days to the excluded applicant. Completion of the process without a deadline defined for that purpose in the Regulation;

- Within 6 working days from the date of submission of applications (as per paragraph 1 of article 14 of the Regulation), the regulator immediately communicates the acceptance or exclusion of applications: 9 or 10 December 2020;
- Decision by new entrants on their participation in the bidding phase for new entrants: 24 hours after notification of the acceptance of the respective application;

Starting date of the main bidding phase (if the bidding phase for new entrants does not take place): it will not take place before the seventh working day following the notification referred to in sub-paragraph (a) of paragraph 5 of article 15 of the Regulation.

Thus, the above assumptions result in the following scenario (hypothetical).

- Notification of acceptance of application: 9 or 10 December 2020;
- Maximum time limit for new entrants to indicate whether they intend to participate in the specific bidding phase for new entrants: 10 or 11 December 2020;
- Beginning of the main bidding phase (if the bidding phase for new entrants is not carried out): 22 or 23 December 2020.

**40.1.** We would be very grateful if you would let us know if our understanding is correct regarding the dates and deadlines to be considered by the applicant.

**Answer:** The deadlines, in their different phases, are laid down in the Regulation, and are calculated pursuant to the terms of article 49.

**40.2.** If our understanding is incorrect, we would be very grateful if you would clarify the dates and deadlines to be considered by the applicant.

**Answer:** See previous answer.

## **REQUEST V.**

### **A. ARTICLE 9 (APPLICANT REQUIREMENTS)**

1. Is it correct to understand that the legal persons to be incorporated do not necessarily have to be commercial companies under Portuguese law? If this is not correct, what is the correct interpretation of the rule?

**Answer:** This understanding is correct.

2. If the legal person to be incorporated applying for the Auction is a company governed by foreign law and there is no document in its jurisdiction equivalent to the valid business name admissibility certificate required in paragraph 2 of article 9, is it correct to understand that (i) this certificate is not required and that (ii) no other certificate is required in its place? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** National and foreign legal persons may apply for the allocation of frequency usage rights, which is the subject of the auction. Pursuant to paragraph 5 of article 13 of the Regulation, documents submitted by candidates whose registered offices are outside national territory must be issued and authenticated by the competent authorities of the country of origin and, if there is no document similar to the one requested, in this case, the valid business name admissibility certificate, it can be replaced by a declaration, under oath, made by the candidate before a judicial or administrative authority, notary or other competent authority in the country of origin.

3. If the legal person to be made a bidder in the Auction is a company governed by foreign law, and there is no access code to the applicant's permanent certificate in its jurisdiction, (i) which document must be presented in the event of allocation of a frequency usage right before the corresponding licence is issued and (ii) should this document be issued, authenticated and stamped with an Apostille by the competent authorities of the applicant's country of origin?

**Answer:** In the case of foreign legal persons, a means of accessing their registration online must be presented, similar to a permanent certificate, or, when such means do not exist, a certificate of registration, which, pursuant to paragraph 5 of article 13, must be issued and authenticated by the competent authorities of the country of origin.

4. If the applicant is a commercial company governed by foreign law (i.e. an entity with registered offices outside national territory), is it correct to understand that, in the case of the allocation of a frequency usage right and the issuing of the corresponding licence in the name of that foreign candidate, the company can carry out its activity in Portugal under this licence through a branch in Portugal (existing or to be incorporated)? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** This understanding is correct.

However, it should be noted that, under the terms of article 4 of the Commercial Companies Code (Decree-Law no. 262/86, of 2 September, in its current wording), any company that does not have its effective headquarters in Portugal, but wishes to exercise its activity here for more than a year, must establish a permanent representation and comply with the provisions of

Portuguese law on commercial registration, with the exception of companies operating in Portugal under the freedom to provide services allowed for in Directive no. 2006/123/EC, of the European Parliament and Council, of 12 December 2006, regarding services in the internal market.

5. Is it permissible for the applicant to be a future Portuguese branch of a legal person incorporated under foreign law?

**Answer:** No. A branch is an establishment without legal personality and, for that reason, cannot be an autonomous subject to rights and obligations, specifically, frequency usage rights. In this context and in the situation described, the applicant is the foreign legal person itself, regardless of whether or not it establishes a permanent representation in Portugal (without prejudice to the answer to the previous question).

6. If the answer to question 1.5) is affirmative, (i) what documents are required from the future branch under the terms of article 9, paragraph 2, of the Regulation, and (ii) in the case of the allocation of a frequency usage right, will the licence be issued on behalf of the branch in Portugal of the legal person under foreign law?

## **B. ARTICLE 10 (GUARANTEE DEPOSIT)**

7. Is it correct to understand that, if the applicant is a legal person to be incorporated, the guarantee deposit must be solicited at the request of any entity that, in the future, owns a shareholding in the future legal person (as this is the “orderer” of the guarantee deposit)? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** If the candidate is a legal person to be incorporated, the guarantee deposit must be solicited at the request of the entity that, in the future, is the largest shareholder in the future legal person.

8. If the candidate is a future branch in Portugal of a legal person under foreign law, it is correct to understand that the guarantee deposit can be solicited upon request either (i) by the legal person under foreign law that will incorporate the branch in Portugal, or (ii) by the entity that controls the legal person under foreign law that, in the end, will set up a branch in Portugal (with any of these being the “orderer” of the guarantee deposit)?

If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** It is correct to understand that guarantee deposit can be solicited at the request of the legal person of foreign law that will incorporate the branch in Portugal.

9. If the applicant is a legal person incorporated by foreign law, is it correct to understand that the guarantee deposit can be solicited upon request either (i) by the legal person incorporated by foreign law, or (ii) by the entity that controls the legal person incorporated by foreign law (with any of these being the “orderer” of the guarantee deposit)? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** It is correct to understand that the guarantee deposit can be solicited at the request of the legal person incorporated under foreign law.

10. Is it correct to understand that the signatures on the guarantee deposit do not need to be recognised in this capacity?

**Answer:** The guarantee deposit is provided by bank guarantee or insurance bond, and must be subscribed by the guaranteeing bank or the insurance company, in accordance with the internal rules of the guaranteeing institution.

#### **C. ARTICLE 11 (REQUESTS FOR CLARIFICATION)**

11. Is it correct to understand that the deadline for requesting clarification is 18 November 2020? If this is not the correct understanding, what is the deadline stipulated in the Regulation for this purpose?

**Answer:** This understanding is correct.

#### **D. ARTICLE 12 (ARRANGEMENTS AND DEADLINE FOR SUBMITTING APPLICATIONS)**

12. Is it correct to understand that the deadline for the submission of applications is 27 November 2020? If this is not the correct understanding, what is the deadline stipulated in the Regulation for this purpose?

**Answer:** This understanding is correct.

13. If, due to restrictions imposed to contain the spread of COVID-19, it is not possible to deliver the application in person to the public service desk at ANACOM's headquarters, against proof of delivery, by the deadline for submission of the application, is it admissible to send the application to ANACOM's registered office by registered mail, with a postal registration date up to the deadline for the submission of applications at 00:00? If it is not admissible, will the application delivery date be extended?

**Answer:** The Regulation already contains provisions that enable ANACOM's Board of Directors to make decisions that, at each moment, are most appropriate for dealing with situations that may occur in the context of the pandemic, force majeure, or other exceptional circumstances (see in particular article 4 of the Regulation).

14. Is it correct to understand that the reference to “applications” in no. 1 of article 12 only refers to the application form that will be presented in a closed and separate envelope of the documents to be filed with the application contained in article 13? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** The application request must be submitted in a closed and separate envelope, under the terms of paragraph 2 of article 12 of the Regulation, addressed to the Chairman of the Board of Directors of ANACOM, and shall include reference to the auction application, but no other information that would allow identification of the applicant. The documents to be filed with the application must be submitted in a closed envelope separate from the one containing the application, as expressly set out in paragraph 1 of article 13. This envelope must contain the same references as those affixed to the envelope referred to in paragraph 2 of article 12.

If they so wish, the applicants may place both envelopes into a third envelope, which, however, must respect the terms of paragraph 2 of article 12 of the Regulation, and be addressed to the Chairman of the Board of Directors of ANACOM, and include the reference to the auction application, with no other information that would allow identification of the applicant.

15. If the applicant is a legal person to be incorporated, is it correct to understand that the application must be signed by the representatives of all the entities that will participate in the share capital of the future entity and that the signatories' powers to make binding commitments with the entities that they respectively represent (future participants in the candidate's capital) must be recognised? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** Yes, in accordance with sub-paragraph (a) of paragraph 2 of article 13 of the Regulation.

16. If the applicant is the future Portuguese branch of a legal person incorporated under foreign law, is it correct to understand that the application must be signed by the person(s) empowered to make binding commitments to a legal person incorporated under foreign law? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** See the answer to question 5.

17. Is it correct to understand that the recognition of in-the-capacity signatures that is done in a language other than Portuguese must be accompanied by a duly certified Portuguese translation?

**Answer:** This understanding is correct.

#### **E. ARTICLE 13 (FILING OF THE APPLICATION REQUEST)**

18. If the applicant is a legal person to be incorporated or the future Portuguese branch of a legal person incorporated under foreign law, is it correct to understand that the only documents to be filed with the application are those contained in sub-paragraphs (a), (b) and (c) of paragraph 2 of article 13, and sub-paragraphs (d), (f), (g) and (h) of paragraph 1 of article 13? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** If the candidate is a legal person to be incorporated, reference is made to the provisions of articles 9 and 13, and the application request must be filed with the documents provided for in sub-paragraphs (d), (f), (g) and (h) of paragraph 1, and in sub-paragraphs (a), (b) and (c) of paragraph 2.

As for the submission of an application request by a branch, established or to be established, see the answer to question no. 5.

19. Is it correct to understand that the declarations provided for in sub-paragraphs (g) and (h) of paragraph 1 of article 13 do not have to be signed (i) by the candidate's legal representative(s) or person(s) with powers to enter into binding commitments, recognised in this capacity under legally accepted terms, or (ii) by the natural persons designated to bid in the name of and on behalf of the applicants, with recognised signatures, as the case may be? If this is not the correct understanding, what is the correct interpretation of the rule?

**Answer:** This understanding is correct.

20. If the documents referred to in sub-paragraphs (b) and (c) of paragraph 1 of article 13, submitted by applicants with registered offices outside national territory, issued and authenticated by the competent authorities of the country of origin, do not have an expiration date (either because this does not exist in the country of origin or because there is no such registration in the official document), is it correct to understand that this will not be a reason for exclusion from the application?

**Answer:** This understanding is correct.

21. Sub-paragraph g) of paragraph 1 of article 13 establishes that the applicant must file its application with a “Declaration in which the applicants indicate, specifically, who are the titleholders, natural or legal persons, and with which amount they participate in the share capital of the applicant, and, in the case of any or some of the partners, be a legal person, including information that allows verification of compliance with the provisions of article 8, taking into account the criteria established in article 21 of the Securities Code”. In order to comply with this sub-paragraph, is it correct to understand that the applicants may only submit a sworn declaration, ensuring verification of compliance with the provisions of article 8, without the need to file the application with additional documents (namely, corporate documents)?

**Answer:** This understanding is not correct. The declaration in question must include the necessary information to allow verification of compliance with the provisions of article 8 of the Regulation, taking into account the criteria established in article 21 of the Securities Code.

Given the importance of this information as a precondition for the other phases of the auction, particularly in assessing any limits on the allocation of frequencies under article 8 of the Regulation (limits whose management will be handled by the electronic platform in the bidding phase), it is considered that it should remain unchanged from the moment the application is submitted until the issuance of the licenses for the allocation of frequency usage rights, which substantiate these rights, including the conditions associated with the respective exercise, after prior hearing of their holders (see article 40, paragraphs 3 to 5 of the Regulation).