

description of the network or service they intend to commence to ANACOM and to give an estimate of the intended date of commencement, without prejudice to other details which may be required by the regulator. The procedures for commencing the provision of electronic communication networks or services can be consulted on ANACOM's website⁴.

The provision of non-publically available electronic communication networks or services, operating in bands of radio frequencies subject to licensing, is only dependent on the corresponding network or station licensing application, pursuant to Decree-Law no 151-A/2000 of 20 July, as amended by Decree-Law No 264/2009 of 28 September.

The legal regime applicable to the use of stations of the amateur and amateur satellite services is set forth in Decree-Law no 53/2009 of 2 March.

2. NFAP FRAMEWORK

Under the terms of article 16, ANACOM is bound to publish the NFAP on an annual basis, which shall include:

- a) The frequency bands and the number of channels already allocated to companies offering publicly available electronic communication networks and services, including the date of the allocation's review;
- b) The frequency bands reserved and to be made available in the following year with respect to publicly and non-publicly available electronic communication networks and services, with specification of the cases where rights of use are required and the respective allocation process.
- c) Frequencies whose rights of use are transferable under the terms of article 37 of the LEC.

Frequencies allocated to the Armed Forces and to security forces and services are not included in this publication.

The radio spectrum is divided into frequency bands, which range from 8KHz to 2000 GHz, attributable to different radiocommunications services (e.g. fixed mobile, broadcasting, radiolocation, radionavigation, amateur, radio astronomy, etc.). As far as planning of the spectrum is concerned, and given its scarcity, the goal is always, as far as possible, for

services and transmission services in networks used for broadcasting, without prejudice to the exclusion referred to in point b) of paragraph 1 of article 2 of the LEC."

⁴ Available at <http://www.anacom.pt/render.jsp?categoryId=115580>.

frequencies to be shared by different radiocommunications services, provided that there is no harmful interference.

In terms of a determined radiocommunications service (e.g. fixed services - fixed links), specific channelling may also be defined. This represents a new sub-division of the bands into channels of well defined width, which may occupy the entire band or just a small part. This channelling has the aim of organising the uses of radio spectrum to minimise harmful interference between operators/users of neighbouring countries and allowing the sector/s Industry to obtain economies of scale.

In this context Portugal adopts channelling which is harmonised at a European level, pursuant to the spectrum planning work undertaken at the Conference of European Postal and Telecommunications Administrations (CEP), or at a global level, resulting from harmonisation undertaken at the International Telecommunication Union - Radiocommunication Sector (ITU-R).

To identify the radiocommunications services applicable to Portugal, in accordance with the ITU-R Radiocommunications Regulation (RR), Annex 1 of the NFAP presents the Frequency Allocation Table, which also reflects the main principal national applications (principal authorized services / systems in Portugal).

The RR, an international treaty ratified by Portugal, results from agreements signed between the ITU's members within the framework of the World Radiocommunication Conferences (WRC), which take place every 3 or 4 years, and is binding upon the countries which belong to this organisation.

In addition to carrying out reviews of the RR, the WRCs establish guidelines, at a technical and regulatory level, for the use of the radio spectrum. The last WRC was held in Geneva from 22 October to 16 November 2007⁵. Preparatory work is currently underway at a national level for the next WRC, which will take place in 2012.

The uses of the spectrum are based on the publication of the uses and reservation of frequency bands, for each year, in the NFAP (Annexes 2 and 3, respectively), with respect to publicly and non-publicly available electronic communication networks and services.

The NFAP specifies the cases where frequency usage rights are required, and whether their allocation takes place according to the full accessibility regime or involves selection

⁵ The principal conclusions of the conference can be consulted at <http://www.anacom.pt/render.jsp?categoryId=117299&languageId=1>.

by competition or comparison, including auction or tender. The respective processes follow specific procedures, as set out by articles 31 and 35 of the LEC.

The rights of use set out in the NFAP are transferable in accordance with the regime set forth in article 37 of the LEC. In respect of the transfer of rights of use of frequencies, ANACOM plans to establish an approach in the near term which clarifies the relevant rules and conditions associated with secondary spectrum trading (see Section 4).

Under the terms of article 31 of the LEC, ANACOM may proceed to release decisions limiting the allocation of usage rights, which decisions shall have due grounds and shall take into consideration the need to maximise benefits for users and to facilitate the development of competition.

The NFAP also includes indication of the uses of frequencies which are exempt from radio licensing (Annex 4), for which no prior action is required by ANACOM.

As can be seen in the section of the NFAP that presents the reservation of frequency bands established for each year (Annex 3), the process of allocating available spectrum is, as a rule, that of full accessibility (e.g. Fixed Service applications). This provides users with faster access in frequency bands where demand does not exceed available radio spectrum, thereby contributing to the maximisation of benefits for consumers, promoting competition and the development of the market.

Taking into account that the adoption of the NFAP constitutes a measure with significant impact on the relevant market, it is preceded by the general consultation procedure as set out in article 8 of the LEC. Subsequently, a new edition of the NFAP is published, in order that the edition in force remains updated. Nevertheless, in exceptional circumstances and where there is due cause, there may be a need to make alterations to items contained in the NFAP.

As a fundamental instrument in the management of the spectrum, stability is enshrined in the NFAP by the Law, in order to guarantee security to market players, together with the capacity to adapt.

In the meantime, it is necessary to ensure a balance between the stability that is the aim of the NFAP and the alterations that are necessary to ensure that it continues to appropriately reflect the objectives as set out by Law, in particular the need to promote harmonisation of frequency use (paragraph 4 of article 15 of the LEC) and the guarantee of conditions for effective competition in the relevant markets, as well as the effective and efficient use of frequencies (see points b) and c) of paragraph 2 of article 15 of the LEC).