



EUROPEAN COMMISSION

Brussels, 30.9.2022
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Autoridade Nacional de
Comunicações (ANACOM)

Avenida José Malhoa No. 12
1099-017 Lisboa
Portugal

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

**Subject: Case PT/2022/2391 – Weighted Average Cost of Capital (2022) of MEO
in Portugal**

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

Dear Mr João Cadete de Matos,

1. PROCEDURE

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

The national consultation² ran from 15 July 2022 to 12 August 2022.

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

² In accordance with Article 23 of the Code.

The Commission sent a request for information (RFI)³ to ANACOM on 13 September 2022, and received a reply on 16 September 2022.

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

2. DESCRIPTION OF THE DRAFT MEASURE

2.1. Background

ANACOM annually notifies the updated WACC calculation to the Commission as of 2019. ANACOM notified the updated WACC calculation for 2018 and 2019 under cases PT/2019/2159⁴ and PT/2019/2195⁵, respectively. In these cases the Commission had no comments. The current WACC methodology used by ANACOM was notified to the Commission under case PT/2021/2294⁶. The Commission had no comments to the methodology as ANACOM followed the 2019 Commission's Notice on the calculation of WACC (the "Notice")⁷.

ANACOM notified the 2021 WACC in case PT/2022/2357⁸, setting a WACC of 6.26%. ANACOM followed the same methodology as in the previous WACC notification. Moreover, ANACOM used the WACC parameters set by BEREC in its 2021 Report on WACC parameter calculations⁹.

The Commission had no comments on the methodology. However, the Commission commented on the urgent need for a timely review of markets and prices. The Commission noted that the prices of several regulated access products in Portugal had not been updated for a long period of time (LLU, copper bitstream and leased lines). In particular, the prices of regulated access to ducts and poles dated from 2006 and 2010 respectively¹⁰. The notification to the Commission of the review of market 2/2020 was also already due. The notification to the Commission of the review of markets 1/2020 and 3b/2014 was due in March 2022.

The Commission took good note of ANACOM's expected timeline to notify to the Commission the draft reference offers for ducts and poles, including prices, in Q2 2022, as well as to publish for consultation the draft decisions on the review of

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

⁴ C(2019) 3426

⁵ C(2019) 6914

⁶ C(2021) 1246

⁷ Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector, OJ C 375/01, 6.11.2019.

⁸ C(2022) 971

⁹ BoR (21) 86

¹⁰ ANACOM notified the price review for regulated access to ducts and poles in case PT/2022/2382 (C(2022)5174).

markets 1/2020, 2/2020 and 3b/2014, including a price assessment, during the second half of 2022.

The Commission strongly encouraged ANACOM to respect the deadlines as set out in the Code to regularly review and notify to the Commission markets and corresponding regulated access prices.

2.2. Description of the notified measure

ANACOM computes MEO's WACC for 2022 and follows the WACC methodology outlined in the Notice. Further, ANACOM uses where relevant the WACC parameters set by BEREC in its 2022 Report on WACC parameter calculations (the "2022 Report")¹¹.

ANACOM maintains its current methodology and therefore the notified measure updates the WACC parameters to reflect those from the 2022 BEREC Report. In addition, the tax rate decreased from 31.14% to 22.5% since MEO did not report any tax profit for the financial years 2019, 2020 and 2021. MEO's WACC for 2022 has been determined based on the parameters listed below.

Table 1: WACC of MEO in 2022

Risk-Free Rate	1.12%
Debt premium	1.3114%
Equity beta	0.6673
Equity Risk Premium	5.7%
Gearing	42.4167%
Tax rate	22.5%
Post-tax Cost of equity	4.9236%
Nominal pre-tax WACC	4.69%%

Compared to last year, the WACC implemented for MEO has dropped from the 2021 WACC estimated of 6.26%.

3. COMMENTS

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

3.1. Urgent need for a timely review of markets and prices

The Commission notes, as it did in previous cases, that the prices of several regulated access products in Portugal have not been updated for a long period of

¹¹ BoR (22) 70

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

time (LLU, copper bitstream and leased lines). The notifications to the Commission of the review of markets for wholesale local access provided at a fixed location¹³, for wholesale dedicated capacity¹⁴, for wholesale central access for mass-market products¹⁵, and for trunk segments of leased lines¹⁶ are also overdue.

The Commission takes good note of ANACOM's expected timeline¹⁷ to publicly consult the reviews of markets for wholesale local access provided at a fixed location, for wholesale dedicated capacity (also including market for trunk segments of leased lines), and market for wholesale central access for mass-market products in the second half of 2022. Provided that no major changes should be required after the public consultations, ANACOM expects to notify to the Commission the draft measures within about 4 months after launching the respective national consultations

The Commission urges ANACOM to respect the deadlines as set out in the Code to regularly review and notify to the Commission markets and corresponding regulated access prices. In that respect, the Commission expects ANACOM to follow its timeline as communicated without any further delays.

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

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

Pursuant to Point 6 of Recommendation 2021/554¹⁸ the Commission will publish this document on its website. If ANACOM considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information that

¹³ Corresponding to market 1 in the 2020 Recommendation on Relevant Markets.

¹⁴ Corresponding to market 2 in the 2020 Recommendation on Relevant Markets.

¹⁵ Corresponding to market 3b in the Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (OJ L 295, 11.10.2014, p. 79–84).

¹⁶ Corresponding to market 14 in the Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services (OJ L 114, 8.5.2003, p. 45)

¹⁷ PT/2022/2382 (C(2022)5174). Reply to question 2 of the 1st RFI.

¹⁸ Commission Recommendation (EU) 2021/554 of 30 March 2021 on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code OJ L 112, 31.3.2021, p. 5.

you wish to have deleted prior to publication, please inform the Commission¹⁹ within three working days of receipt²⁰. Please give reasons for any such request.

Yours sincerely,

*For the Commission
Roberto Viola
Director-General*

¹⁹ By email: CNECT-markets-notifications@ec.europa.eu

²⁰ The Commission may inform the public of the result of its assessment before the end of this three-day period.