



GOVERNMENT OF MALTA

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**Transposition of Directive 2014/61/EU:  
Report on responses to Consultation on measures to reduce  
the cost of deploying high-speed electronic communications  
networks**

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PARLIAMENTARY SECRETARIAT FOR  
COMPETITIVENESS AND ECONOMIC GROWTH  
MINISTRY FOR TRANSPORT AND INFRASTRUCTURE

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## 1. BACKGROUND

This document represents the report on the consultation relative to Transposition of Directive 2014/61/EU, on measures to reduce the cost of deploying high-speed electronic communications networks. It is intended to accompany the final draft legislation that will be presented to Cabinet and subsequently to Parliament.

The joint 'owners' of this consultation process are the Ministry for Transport and Infrastructure (MTI) and the Parliamentary Secretariat for Competitiveness and Economic Growth (PSCEG). The process has been co-ordinated by the Malta Communications Authority (MCA), together with the other two institutional stakeholders that are directly involved, namely Transport Malta (TM) and the Building Regulations Office (BRO).

The consultation process has addressed proposed changes to the Utilities and Services Act (Cap 81), which constitute the bulk of this document. As regards the building regulations aspects these have been addressed via proposed draft regulations on in-building Physical Infrastructure Access to Electronic Communications Services, under the Building Regulations Act (Cap 513). A minor part of the transposition will also result in changes to the Electronic Communications Act (Cap 399). These proposed changes were addressed in detail in the consultation document.

The public consultation took place between the 9th of October and the 6th of November 2015. At the end of this period four responses were received in all, from:

GO

Melita

Vodafone

MEPA

With the exception of MEPA, all three responses came from electronic communications operators. All three dealt with both general principles and the detail of the draft legislation. The MEPA response, on the other hand, was limited to a detail in the consultation document.

What follows is a high level rendering on the feedback received from the above respondents. The gist of the responses received is presented by subject matter and the most relevant aspects are being reported upon.

## 2. SUMMARY OF RESPONSES AND RELATED COMMENTS

The responses from the three operators were all split into two parts, namely a series of general comments and proposals to changes to the wording of the draft legislation. The key areas addressed in the general comments are summarised below. The detailed proposals on changes to the legislative text have been taken into account and a number of changes to the text of the legislation in line with proposals, although not all of these could be taken on board. The following are the main general points raised by the reporting entities mentioned above. Where warranted, we have made comments accordingly.

### Difficulties in implementation

All three operators concur that the major challenge to this transposition will lie in the implementation of the necessary measures to render the legislation operative on the ground.

### Need for more detailed guidelines on 'rules of engagement'

In several instances, operators pointed out to the need for more detailed guidelines on pricing and technical aspects that will come into play when an operator seeks access from another operator or from the owner of rights to use in-building infrastructure.

We concur with this observation. The drawing up of the necessary guidelines will, however, happen after the legislation has come into play. In this context the setting up of an inter-authority advisory committee is an important component of the exercise.

### Agreement to proposal for advisory committee

One operator expressed outright agreement with the setting up of an inter-authority advisory committee. None of the respondents raised issues on its proposed setting up.

### The need for Access rules not to supplant ex ante imposition of remedies on operators having Significant Market power

One operator commented that the access rules contemplated in this legislation should not be construed as in any way replacing current competition-related remedies imposed on operators having Significant Market Power, but rather as being complementary to the latter.

We concur fully and there is no intention of relaxing any such competition-based, ex-ante remedies.

### Need for speedier or slower timeframes

There were a number of comments relative to timeframes contemplated in the transposed Directive, relative to provision of relevant information and other requirements such as

handling of disputes. In some instances these were deemed too long by respondents, whereas in others the comment was that they are too short.

Our position is that the timeframes contemplated are derived faithfully from the Directive. Any eventual changes can only be made after the necessary experience, with the processes in action for some time, has been garnered.

#### Difficulties with dispute resolution tribunal set-up

There were comments on the difficulties that are likely to be encountered with the dispute resolution tribunal, in view of the timeframes being contemplated for dispute resolution. One respondent suggested the Administrative Review Tribunal (ART) as the ideal venue when two operators do not reach agreement on the provision of access to ducts.

Our comment here is that the ART cannot be the venue for inter-operator disputes because by its very nature it can only listen to complaints against abuse of administrative discretion. On the other hand the Utilities and Networks Dispute resolution Board (UNDB), has been modelled along the lines of the ART.

Another suggestion was having the MCA as the arbiter to adjudicate inter-operator disputes over access. Such a suggestion, however, overlooks the fact that such disputes are not necessarily between electronic communications operators, but can also involve other utilities, which fall outside the regulatory jurisdiction of the MCA.

#### Comment on permit granting

One respondent made a clarification, that while reference to the development planning process within the policy document is positive, it is important that the text is not construed as consent to, or sanctioning of, any development, trenching works and other site engineering operations. It is thereby important to clarify that any proposals for such works will continue to be assessed on a case-by-case basis through the appropriate development consent mechanism.

We feel that the text of the legislation is amply clear on this point and the concern raised by respondent is unfounded.

#### Broadcasting Authority inclusion under the definition of network operator

One respondent proposed that the Broadcasting Authority should be included in the definition of network operator, given its tower infrastructure.

We do not agree. The provision of a telecoms tower does not make the BA a fully fledged network operator. Moreover in going down this route one would have to capture all structures used for such access. This is not to be seen as precluding government from at any point deciding that its towers be also used to provide access to third parties. But any such arrangement would not be under this Act.

### Proposals for changes to the text of the legislation

There were a number of proposals for changes to the text of the legislation. Practically all proposals were made constructively and most addressed issues of interpretation and readability. None of the respondents presented any serious objection to the draft legal provisions presented for consultation. A sizeable number of proposals were taken aboard, in that they essentially enhance the legal provisions.

### 3. NEXT STEPS

The draft legislation has been amended accordingly in line with a number of proposed changes by respondents. It is now following the legislative process leading up to presentation of the draft bill in Parliament.

The implementation of the processes being contemplated in this transposition can present a precious tool, not just for the deployment of Next Generation high-speed broadband but also for all deployments of whatever nature. Operators have highlighted the complex nature of the implementation of this legislation, among others because of the inter-institutional nature of its make-up.

Full transposition into Maltese law is expected by the end of March 2016. Meanwhile the key entities concerned will be commencing work on the implementation aspects of the Directive, which, as also pointed out by respondents, will constitute the main challenge. The implementation phase will take place throughout 2016-2017.

#### 4. CONTACT DETAILS

If you have any questions regarding this response, please contact:  
[onlineconsultations@msdc.gov.mt](mailto:onlineconsultations@msdc.gov.mt)