

PUBLIC
LAW

NEW LEGAL
REGIME TO LODGE
AND INSTALL
ELECTRONIC
COMMUNICATION
NETWORKS

NEW GENERATION NETWORKS

On May 21 Decree-Law 123/2009 was published, setting out the legal regime applicable to the construction of infrastructures to lodge and install **electronic communication networks** and to the construction of telecommunications infrastructures in housing developments, urban settlements, concentrations of buildings and buildings.

The above-mentioned Decree-Law is inserted in the promotional policy for the new generation networks (which provide access to high debit and speed). The stated purpose is to **facilitate investment in optical fibre networks**, assuming that in the course of the next years fibre will substitute, gradually, the pair of copper wires that currently supports the fixed services of voice and data as broadband access and television on IP.

Aiming to ensure publicity and transparency in the access to infrastructures a **Central Information System (CIS)**, is foreseen, managed by ICP-ANACOM, which will provide interested companies with immediate access to information on the localization and characteristics of the infrastructures able to install the electronic communication networks, and the respective conditions of access, as well as on the planned construction of these types of infrastructures in each municipality.

This latter information, which shall be provided by the municipalities, is related to the **special regime of prior checking** of the construction of infrastructures able to install electronic communication networks. The new regime amends the existing Electronic Communication Law.

The new regime creates obligations for public entities, for the entities that retain or utilize the infrastructures installed in the public domain (including the operators of electronic communications), and for public companies and concessionaires.

- the obligation to provide **conduit access, posts or similar infrastructures able to install those electronic communication networks**, in equal, transparent and non-discriminatory terms;
- the stipulation that access can only be refused if the intended use endangers the purpose for which the infrastructures had been created or if it shall be prejudicial for the supply of a public service that it supports; and
- the obligation to provide the cadastre of these infrastructures to the CIS, within a one-year period dating from the concretization of this system by ICP-ANACOM, which shall occur by the end of July 2009.

In accordance with the provisions of the Decree-Law, from 21st June the ICP-ANACOM shall be provided with information on these infrastructures and respective conditions of access, as well as on the entity or contact point next to which information shall be requested and requests for access shall be presented. From the same date this information shall also be published by these entities and by ICP-ANACOM on its website (<http://www.anacom.pt>).

Conduit access, posts and infrastructures related to the historical operator - PT Comunicações - continue to be regulated by the Electronic Communication Law and by a wholesale offer (ORAC), the content of which is determined by ICP-ANACOM.

Further alterations pertain to urbanism. The following are notable:

- In relation to infrastructures for telecommunication in buildings (ITED), new **buildings** must also be equipped with optical fibre networks (and not only with the classic copper wire and co-axial cables which support the services of cable television broadcasting);
- In relation to telecommunications infrastructures in housing developments (ITUR), an obligation exists to provide space in **new housing developments, urban settlements and concentrations of buildings**, for the installation of piping and equipment and to install a piping network or piping for the installation of cables and other equipments, which could be used for another operator, for wiring in pair cable, co-axial cable and optical fibre to be installed in the set of buildings;
- The express forecast that these **infrastructures included in the allotments and urbanizations enter in the municipal public domain** (designated by public ITUR), the management and conservation belonging to the municipalities (which shall be allocated to a private entity in accordance with the Public Procurement Code).

The public consultation launched by ICP-ANACOM on the second edition of **ITED MANUALS** and the new **ITUR MANUALS**, finishes on July 7. The public consultation covers the obligatory technical specifications with which projects for buildings and allotments and urbanizations, respectively, shall comply.

It is, therefore, reasonable to expect that the definitive versions of these manuals will be approved and published by September 2009, in the Official Journal and website of ICP-ANACOM. Thereafter projects presented in the municipality services must conform to the new rules.

The ITUR, whose licensing processes, authorizations and prior authorization shall be presented in the municipality services, after the entry into force of the referred Decree-Law (22 May) and up to 30 days after the publication of ITUR text-book, shall already be adapted to the installation of cabling of optical fibre for another operator.

“The new regime creates obligations for public entities, for the entities that retain or utilize the infrastructures installed in the public domain (including the operators of electronic communications), and for public companies and concessionaires.”

“The Decree-Law still creates a burden and an obligation for the residents of buildings already constructed.”

The Decree-Law still creates a burden and an obligation for the residents of buildings already constructed:

- in case residents do not decide to adapt the building's communication infrastructure to optical fibre, they may not oppose to the installation of a necessary infrastructure for personal use in order for an interested resident to benefit from the services supported by that technology;
- residents are obliged to give open, non-discriminatory, transparent and free access to the ITED and all operators for installation, maintenance, repair and amendment.

In relation to the electronic communication sector (properly said) there are two key changes.

The first respects the obligation of all operators of electronic communication networks (not only the historical operator) that have own infrastructures, installed in a public domain, to publish the respective cadastre on CIS and provide access to the referred infrastructure to other operators.

The second relates to **investment sharing** for the first operator that installs a optical fibre network in a building already constructed, with the purpose of promoting the competition. Whilst original in Portugal, similar models exist in some EU Member States. The first operator may install the infrastructure (paid for by itself) in order to be able to supply all the divisions of the building, and that may be shared by the other operators who intend to supply services based on optical fibre. The second operator that installs an infrastructure in the building shall reimburse the first operator for 50% of the cost incurred by the first operator. Subsequent operators support costs in accordance with set ratios.

Finally, the Decree-Law specifies **that the projects and the execution of ITUR, and not only the ITED, must be carried out by accredited technicians**, not leaving to any operator of electronic communications - namely the historical operator - the task of approving the projects or proceeding with the respective survey. These tasks, in accordance with the Legal Regime of Edification and Urbanization, apply exclusively, when applicable, to the municipality services.

Contact: [Fernanda Matoso fmatoso@mlgts.pt](mailto:Fernanda.Matoso@mlgts.pt)

MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA

ASSOCIADOS
SOCIEDADE DE
ADVOGADOS

MEMBER
LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

LISBON

Rua Castilho, 165
1070-050 Lisbon
Telephone: (+351) 213 817 400
Fax: (+351) 213 817 499
mlgtslisboa@mlgts.pt

OPORTO

Av. da Boavista, 3265 - 5.2
Edifício Oceanvs – 4100-137 Oporto
Telephone: (+351) 226 166 950 | 226 052 380
Fax: (+351) 226 163 810 | 226 052 399
mlgtsporto@mlgts.pt

MADEIRA

Avenida Arriaga, Edifício Marina Club, 73, 2º
Sala 212 – 9000-060 Funchal
Telephone: (+351) 291 200 040
Fax: (+351) 291 200 049
mlgtsmadeira@mlgts.pt

www.mlgts.pt