



Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act

Directive Number 2 of 2021 entitled: ‘Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act’

Decision Notice

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PART I – PURPOSE AND DEFINITIONS

Title

Cap. 399

1. The title of this directive is Directive Number 2 of 2021 on the Modalities of Payment for General Authorisations and Rights of Use under the Electronic Communications (Regulation) Act.

Purpose and coming into force

SL 399.48

2.1. The purpose for this Directive is to regulate the manner in which the charges and fees established in the Twelfth Schedule of the Electronic Communications Networks and Services (General) Regulations, are paid to the Malta Communications Authority and to ensure compliance with regulations 12 (Administrative Charges), 31 (Fees for rights of use for radio spectrum), 33 (Conditions attached to individual rights of use for radio spectrum) and 82 (Fees for rights of use for numbering resources) of the aforesaid Regulations.

2.2. This Directive shall be deemed to have come into force as from the 1st October 2021.

Repeal of Directive 1 of 2004 as amended

3.1. Directive number 1 of 2004, as amended, entitled “Directive on the Modalities of Payment for General Authorisation and Rights of Use under the Electronic Communications (Regulation)” is being repealed.

3.2. The provisions of Directive number 1 of 2004 as amended shall remain applicable in so far as they relate to any outstanding payments and, or obligations under that Directive prior to the 1 October 2021.

Interpretation

Cap. 399

SL 399.48

4. In this Directive unless the context otherwise requires:

"the Act" means the Electronic Communications (Regulation) Act;

"the Authority" means the Malta Communications Authority;

"non-chargeable activities" means those activities which do not incur variable administrative charges under paragraphs (b), (c), (d) or (e) of Part A in the Twelfth Schedule to the Electronic Communications Networks and Services (General) Regulations;

"quarter" means any period of three months ending on the 31 March, 30 June, 30 September, and 31 December of any year;

"the Regulations" means the Electronic Communications Networks and Services (General) Regulations;

"relevant year" means any year during which charges are to be paid to the Authority;

"total gross revenue" means the total gross turnover generated by an undertaking authorised under the Act, less non-chargeable activities; and

"undertaking" means an undertaking deemed to be authorised in accordance with the Act.

Part II - ADMINISTRATIVE CHARGES TO BE PAID ON AN ANNUAL BASIS UNDER PART A OF THE TWELFTH SCHEDULE TO THE REGULATIONS

Fixed administrative charges

5. This article relates to the fixed administrative charges established in paragraphs (a) to (e) of Part A of the Twelfth Schedule of the Regulations.

The fixed administrative charges applicable to the electronic communications networks and, or services which an undertaking is authorised to provide, shall be payable in advance to the Authority in equal quarterly instalments on the first day of every quarter during which an undertaking is authorised to provide such networks and, or services:

Provided that a pro-rated proportion of the fixed administrative charge due for the first quarter, or part thereof, for which the undertaking is authorised to provide networks and, or services shall be payable to the Authority immediately upon notification of the intention to provide networks and, or services in accordance with regulation 5 of the Regulations

Variable administrative charges

6. This article relates to the variable administrative charges established in Part A of the Twelfth Schedule of the Regulations.

The variable administrative charges, based on total gross revenue, applicable to the electronic communications services which an undertaking is authorised to provide shall be payable in advance to the Authority in equal quarterly instalments on the first day of every quarter during which an undertaking is authorised to provide such services:

Provided that a pro-rated proportion of the variable administrative charge due for the first quarter, or part thereof, for which the undertaking is authorised to provide services shall be payable to the Authority immediately upon notification of the intention to provide services in accordance with regulation 5 of the Regulations:

Provided further that a pro-rated proportion of the applicable fees due for the first quarter, or part thereof, for which the undertaking is authorised to provide services shall be payable to the Authority once the undertaking submits the first statement of the projected revenues as stated in article 9.

Part III - FEES FOR RADIO SPECTRUM TO BE PAID ON AN ANNUAL BASIS UNDER PART B OF THE TWELFTH SCHEDULE TO THE REGULATIONS

Fees on the basis of radio spectrum channels

7. This article relates to the fees on the basis of radio spectrum channels established in Part B of the Twelfth Schedule of the Regulations.

The fees for radio spectrum which are based on the number of radio spectrum channels shall be payable in advance to the Authority in equal quarterly instalments on the first day of every quarter:

Provided that a pro-rated proportion of the applicable fees due for the first quarter, or part thereof, for which the undertaking enjoys a right of use shall be payable to the Authority upon grant of the right of use of every channel, this without prejudice to the faculty of the Authority to require a deposit equivalent to the fees due for one year in advance and at an application stage for such grants of use. In this regard any amounts paid will be subsequently deducted from any such deposit.

Part IV - FEES FOR NUMBERS TO BE PAID ON AN ANNUAL BASIS UNDER PART C OF THE TWELFTH SCHEDULE TO THE REGULATIONS

Fees based on rights of use for numbering resources established in Part C of the Twelfth Schedule of the Regulations:

8. The fees for rights of use for numbering resources shall be payable to the Authority in advance in equal quarterly instalments on the first day of every quarter:

Provided that a pro-rated proportion of the applicable fees due for the first quarter, or part thereof, for which the undertaking enjoys a right of use shall be payable to the Authority upon grant of the right of use for numbering resources.

Part V - PROVISIONAL PAYMENTS, VERIFICATION AND ADJUSTMENTS

Statement of projected revenues

9. For the purpose of calculating variable charges and fees to be determined on the basis of total gross revenue, each undertaking shall submit to the Authority, by not later than the 30 September of the previous year, a statement of projected revenues for the relevant year (GR1):

Provided that the first statement of projected revenues for the relevant year or part thereof, to be submitted by an undertaking following notification of its intention to provide

networks and, or services under the general authorisation regime, shall be submitted by not later than the end of the first quarter in which such notification is made:

Provided further that the Authority shall have the right to revise such projections should these appear to be unreasonable. Prior to making such revisions, the Authority shall grant to the relevant undertaking an opportunity to comment on its proposed decision and course of action.

Reconciliation with actual revenues

10.1 The Authority shall reconcile charges and fees paid on the basis of projected revenues, against the charges and fees, which should have been paid, on the basis of actual revenues. For this purpose, each undertaking shall submit to the Authority in respect of every relevant year, within a maximum period of 12 months after the 31 December of the relevant year, an audited statement of actual quarterly revenues (GR2).

10.2 The audited statement of actual quarterly revenues shall indicate separately the total gross turnover as represented in the financial statements of the undertaking less turnover from non-chargeable activities. Undertakings shall provide the Authority with a list describing the nature of activities classified as non-chargeable. Such list shall be submitted to the Authority with the audited statement of actual revenues (GR2):

Provided that an undertaking whose financial year coincides with the calendar year may submit a statement of actual revenues (GR2) for the entire year and shall not be required to provide a quarterly analysis:

Provided further that an undertaking whose financial year coincides with the calendar year, and whose actual revenues agrees with the total gross turnover as represented in the financial statements of the undertaking without deduction for non-chargeable activities, may attach to the statement of actual revenues (GR2) an unabridged copy of the audited financial statements and shall not be required to submit to the Authority a separate report by the auditors of the undertaking concerned.

10.3 Where an undertaking does not submit to the Authority, within the specified period of 12 months after the 31 December of the relevant year, the audited statement of actual quarterly revenues (GR2) as prescribed in article 10.1, the Authority may determine the final charges and fees which should have been paid in such manner and by such method as the Authority deems fit, without prejudice to any liability or to further administrative penalties and, or regulatory sanctions, however so described, otherwise incurred by that undertaking by reason of its failure or neglect to deliver the audited statement of actual quarterly revenues (GR2):

Provided an undertaking, on whom a final determination has been notified in accordance with this article, may remedy its failure to deliver the audited statement of actual quarterly revenues (GR2) within 30 days of being served with such a determination. If the remedy is received by the Authority before the lapse of 30 days, the final determination by the Authority will be withdrawn:

Provided further that this sub-article shall also be applicable in respect of any relevant year in respect of which an audited statement of actual quarterly revenues (GR2) should have been submitted to the Authority before the date of coming into force of this Directive.

10.4 In the case of

-i- the liquidation of an undertaking, or

-ii- an undertaking no longer authorised in accordance with the Act:

then in such instances the Authority for the purpose of notifying a final determination under article 10.3, shall only be required to send any such determination by registered post to the address last notified to the Authority, and the determination shall accordingly be considered as having been duly notified to the undertaking in question.

Undercharging and overcharging

11.1. Where the amount paid by an undertaking in accordance with article 9 is less than the amount payable in accordance with article 10, the undertaking concerned shall, within such time as may be specified by the Authority in a request in writing, pay to the Authority the balance of the charges and, or fees so payable.

11.2. Where the amount paid by an undertaking in accordance with article 9 is more than the amount payable in accordance with article 10, the Authority shall, as soon as may be after the receipt of all the audited statements referred to in article 10, repay to the undertaking concerned the excess amount so paid by way of a credit note against fees payable in the following year.

Part VI - RECONCILIATION OF ADMINISTRATIVE CHARGES

Overview of administrative charges and administrative costs

12.1 The Authority in accordance with the requirements under regulation 12 of the Regulations to publish an annual overview of its administrative costs and of the total sum of charges collected, shall publish such an overview by not later than six months following the 31 December of each relevant year.

12.2 For the purposes of transparency in the conduct of its affairs, the Authority shall also publish its business plan including projected revenues and expenditure for any financial year during the preceding year.

Payment or compensation

13.1 The Authority shall in the case of administrative charges imposed on an annual basis, make appropriate repayments or compensations in the case of overcharging, or impose additional charges in the case of undercharging of an undertaking to whom a charge is imposed in the light of any difference between the total sum of administrative charges collected and the administrative costs incurred:

Provided that the Authority shall carry out this exercise by not later than six months after it has received all the statements of actual quarterly revenues (GR2) of all the undertakings required to pay administrative charges.

13.2 Any surplus of income from authorisation charges collected by the Authority under Part A of the Twelfth Schedule to the Regulations over the expenses incurred by the Authority in the discharge of its functions in a particular relevant year shall:

13.2.1 where appropriate, be retained by the Authority to be offset against authorisation charges due for the subsequent year,

or

13.2.2 Within 30 days after the publication of the annual overview, be refunded proportionately to the providers of electronic communications services and, or networks on whom the charges were imposed.