

**TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS**

National Strategy for digital connectivity

1. Introduction

Following ANACOM's public consultation on Digital Connectivity, the National Strategy for Connectivity in Very High Capacity Electronic Communications Networks (the "Strategy") for the period 2023-2030 was published on 28 December in the Official Gazette. The strategy was approved by Resolution of the Council of Ministers 139/2022.

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2. Background

Electronic communications networks, particularly very high-capacity networks, are crucial to meeting the basic needs of citizens and to ensuring growth and transformation in the economic activities of the country. However, there are still several areas of Portugal that are not covered by very high capacity electronic communications networks. As a result, these areas face a shortfall in economic and technological development in relation to other areas.

In this context, the aim of the Strategy is to ensure that all households are covered by a Gigabit network before 2030, in line with the goals outlined at European level.

3. General considerations

Although the coverage of Very High Capacity Networks (VHCNs) has progressively increased, private investments have been focused on large population centres and adjacent areas. Private initiative alone is not enough to fill the gap in VHCN coverage and eliminate regional disparities in the country in terms of connectivity. Thus, there are areas of the country, both on the mainland and in the autonomous regions of Madeira and the Azores, which are not yet covered by VHCNs and which therefore do not yet benefit from the range of services made available through these networks ("white areas").

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These areas do not in themselves attract private investment and this was also confirmed by the results of ANACOM's public consultation regarding the investments planned by operators operating in the sector. Accordingly, the Government believes that market failures in terms of lack of coverage of these networks can only be remedied through public intervention, complemented by private investment, in the form of financial assistance to install, manage, operate and maintain VHCNs.

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Investment in these areas may be pursued through different options in terms of technology, topology, support and investment in electronic communications networks, in a model of balanced coverage between mobile and fixed networks, based on technological neutrality.

In turn, it is intended that financing will be ensured by (i) private funding sources, where investments can be made out under market conditions; and by (ii) public funds, where market failures may lead to the exclusion of families and companies from quality Internet access. In the "white areas", this public investment is complementary to private investment.

As regards sources, public funding will come from national and European funds, in particular the European Regional Development Fund. Under Portugal 2030, the European Fund provides for support for investments in digital connectivity through the Regional Programmes. Public funding in "white areas" is the main priority due to the need to increase operators' interest in covering these areas.

The National Strategy for Connectivity in Very High Capacity Electronic Communication Networks

In the context of the approved Strategy, the Government must, by January 2023, present to the members of the Government responsible for the areas of digitalisation, infrastructure and regional development, proposals for the specifications for the tender procedures to install, operate and maintain VHCNs in "white areas".

The proposals to be developed by ANACOM should, in particular:

- Establish that – given that public intervention is framed by state aid for the installation, management, operation and maintenance of the VHCNs – ANACOM will monitor broadband mapping and the installation of networks through Key Indicators. These indicators make it possible to check the level of coverage of "white areas" at any given moment, and to check the level of demand for the services supported by these networks.

- To monitor broadband mapping and network deployment, the tender documents for the installation, operation and maintenance of the network to be launched will contain the following obligations:
 - i) Provide six-monthly reports on the development of works to install VHCNs to be included in the agreements to be concluded to install, manage, operate and maintain these networks in “white areas”.
 - ii) Provide quarterly information on residential and non-residential (industry, commerce and farms) buildings passed, as well as information on access and transmission networks, wherever the wholesale offer is available.
- Ensure compliance with EU state aid rules regarding the deployment of broadband networks to ensure that the offer is effectively open and that there can be competition in the provision of retail services.
- Ensure that the deployment of VHCNs includes, where necessary, the construction of adequate infrastructure to host these networks.
- Define phased coverage obligations by 2030 that enable the provision of a minimum speed of 1 Gbps to all households, in line with the European Commission’s targets.
- Ensure that companies wishing to operate networks under publicly funded contracts provide only wholesale offers, which should include, among others, transparency and non-discrimination obligations. Wholesale offers should be publicly available and consultation of their terms and conditions may not be subject to registration. In addition, if the winning bidder agrees with a given company access terms and conditions more favourable for that company than those contained in the published wholesale offer, these terms and conditions should be made available without reservation to third parties and incorporated in the wholesale offer at least 10 working days before its entry into force.
- Ensure that clawback clauses are included in the contracts to be concluded for the installation, management, operation and maintenance of VHCNs in “white areas”, to ensure repayment to the state in case of non-compliance with contractual obligations.
- Ensure that the tender procedure is divided into geographical areas, covering the whole of the country.
- Ensure technological neutrality to allow contractors to design and manage their own networks.
- Provide the integrated geographic information platform on network coverage (coverage map of fixed and mobile electronic communications networks) by the end of the first quarter of 2023 and, in accordance with market needs, update the functionalities of the Appropriate Infrastructure Information System and the information already existing in the *tem.REDE?* application.
- Present to the Government member responsible for infrastructures, by the end of the first quarter of 2023, a proposal to change the legal framework for the construction, access to and installation of electronic communications networks and infrastructures. This proposal should take into account the incorporation into Portuguese law of the European Electronic Communications Code and the national road map to implement the European initiative “Connectivity Toolbox”, presented to the European Commission on 30 May 2021.

- i) In this regard, the Government intends to amend Decree-Law 123/2009 of 21 May (“Decree-Law 123/2009”) to adapt it to the implementation of VHCNs. The amendments will include addressing access to infrastructures capable of housing electronic communications networks and local licensing for the construction of and/or access to those infrastructures, including rights of passage. The framework established in Decree-Law 123/2009 is already designed to implement VHCNs in Portugal. However, the Government believes that a further amendment may create a more comprehensive approach to implementing these networks in the most remote areas, in order to complement the Strategy.
- o Coordinate with the government bodies of the autonomous regions all issues regarding connectivity in electronic communication networks in these territories.

4. Final considerations

The Government’s vision is that public intervention to support the installation of very high capacity networks in “white areas” is a proportional measure. Moreover, it is limited to the minimum necessary to achieve the objective of promoting equity and territorial cohesion in access to an infrastructure that is essential for citizens and for business needs.

The Government also considers it essential to guarantee this funding, because these areas still have inadequate levels of access to digital services and face a shortfall in economic development and competitiveness compared to more developed regions.

However, the Government also expects that private parties will show interest in contributing to the fundamental task of guaranteeing citizens access to quality communications. Moreover, the tender to be launched will be international in order to also attract foreign investment in the country to undertake this task. ■

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