

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

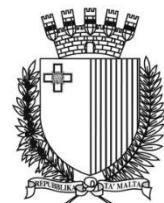
Consultation Document

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PARLIAMENTARY SECRETARIAT FOR
COMPETITIVENESS AND ECONOMIC GROWTH

MINISTRY FOR TRANSPORT AND INFRASTRUCTURE

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FOREWORD

The proliferation on a national scale of high-speed broadband networks is an objective of primary importance that is shared by the Maltese Government and the EU in equal measure.

The transposition into Maltese legislation of Directive 2014/61/EU, on measures to reduce the cost of deploying high-speed electronic communications networks, aims at facilitating and incentivising the roll-out of high-speed electronic communications networks, by reducing the cost of deployment through sharing of existing network infrastructure and the co-ordination of new deployment. The infrastructure component is seen as the biggest barrier to rollout, both from a cost as well as from a physical deployment perspective.

This Directive directly supports the Digital Agenda for Europe, and the European Union Commission's two main broadband targets namely: 30 megabits per second (Mbps) broadband speeds available to 100% of households, and at least having 50% of these households subscribing to speeds over 100Mbps, both by 2020.

While Malta has already reached the 30Mbps objective there is still a substantial distance to travel in order to reach the 100Mbps uptake target¹. Beyond the numbers, take-up of high speed broadband is felt to be a necessary target with a view to accelerating the development of society and of the economy. Facilitating the deployment of multiple Next Generation Access networks (NGANs), would contribute towards its attainment by increasing choice and overall lowering sector costs. Such deployment would also increase the prospect of the delivery of high quality services over these networks, thus providing scope for increased demand. All these aspects should ultimately impact positively on consumers, thereby contributing to the desired increase in take-up.

In a situation such as Malta's where electronic communications undertakings tend towards having their own independent infrastructures, the impact of such legislation may be deemed as being relative. This is even more so in light of the fact that operators at times collaborate on a number of co-location initiatives on a commercial basis. Collaboration on a commercial basis is a positive manifestation, in that the need for legislative and regulatory intervention is minimized, as should ideally be the case. Even so, whilst commercial arrangements of this nature present a best-case scenario, they are not necessarily universal and this Directive provides the necessary level playing field by giving access-seekers the right to access existing passive network infrastructures where this is possible. It also impinges positively on existing players through the lowering of costs thanks to co-ordination of new deployments.

It is also relevant to note that heightened collaboration of this nature among network operators equates to a reduced need for intervention on road surfaces, thereby contributing to substantial savings in terms of time and financial resources.

In prescribing that mandatory access is given only to high speed networks, the proposed legislation is forward-looking and does not allow for obsolete solutions to benefit from its provisions. It also extends access to the rights of high-speed networks to in-building infrastructures. This aspect is particularly important in the context of larger multi-dwelling environments.

¹ All EU member states are at the time of the publication of this consultation as yet rather distant from this ambitious target. Even so, take-up figures for Malta are below the current EU average.

With respect to Government's electoral mandate, the envisaged measures serve to address three objectives² among the Government's stated targets.

In the first instance, the proposed measures have the intent of proliferating high speed broadband networks. This intent is directly in line with Government's stated intention of ensuring that households have access to high speed data services.

The establishment of a single information point and the articulation of information processes and flows will ultimately serve to minimise duplication of requests and easier access to location and other relevant information. These measures therefore serve to improve administrative processes.

Thirdly, improved co-ordination of works and work-processes between different entities via formal organisational set-ups, is another stated objective of Government that will be addressed via the implementation of the provisions that are contemplated in this exercise.

Beyond the requirement of transposition therefore, the desirability of such legislation has also to be seen in light of the above-mentioned national and supra-national objectives. This Government remains committed to improving efficiency in the public sector and the eventual implementation of this proposed legislation will attest to this commitment.

All stakeholders are encouraged to provide feedback to this consultation document. Such input will provide added value to these proposals and help with the formulation of the transposition process, particularly as regards any aspects relating to national circumstances.

² Original text of the three objectives found in the Government's electoral manifesto:

P22 – *Naqtghu l-Burokrazija Zejda – Nimmiraw li nnaqqsu b'25% l-proceduri burokratici ezistenti, speċjalment permezz ta' uzu ahjar ta' sistemi ta' ICT u billi fost mizuri ohrajn, innaqqsu kemm nistghu d-duplikazzjoni ta' talbiet għall-informazzjoni u mili ta' karti li hafna drabi tintalab ripetutament minn dipartimenti u entitajiet differenti tal-Gvern.*

P27 – *Ekonomija Digitali – Nimplimentaw, flimkien mas-settur privat, proġett nazjonali biex kull dar ikollha l-opportunita' li tagħmel uzu minn fibre optic connection għal servizz aktar affidabbli u ta' kwalita'.*

P108 – *Nintroducu unit ta' kordinament biex jiehu hsieb jikkordina x-xoghlijiet fit-toroq bejn entitajiet differenti b'mor li tizzied l-efficjenza, jonqos id-dewmien u jigu ffrankati l-flus.*

PROPOSED MEASURES

The Ministry for the Economy, Investment and Small Businesses together with the Ministry for Transport and Infrastructure are proposing amendments of the Utilities and Services (Regulation of Certain Works) Act (Chapter 81 of the Laws of Malta). Other laws being amended albeit to a significantly lesser extent are the Electronic Communications (Regulation) Act (Chapter 399 of the Laws of Malta) and new regulations under the Building Regulation Act (Chapter 513 of the Laws of Malta).

Chiefly, the enactment of new legislation seeks to transpose the Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks, which Directive was adopted by the EU in 15 May 2014.³ Whilst the changes being proposed are essentially a transposition requirement, benefits should accrue to an appreciable degree and should contribute to the continued deployment of high speed broadband in Malta by improving administrative processes, thereby saving time and resources to the benefit of all, and by spurring sector players to improve efficiency and reduce costs.

Once implemented under national law, the measures provided for under the Directive will impact not only electronic communications network operators but all utility network operators, given that all utility network players will be required to facilitate high-speed broadband roll-out by providing access to, and coordinating civil works with, network infrastructures capable of providing high speed broadband.

The subsequent administrative implementation of this Directive, once transposed, presents the bigger challenge, given the inherent complexities involved in setting up and thereafter maintaining a permanent structures and procedures that will co-ordinate the works of all utilities involved in line with the requirements of the Directive. Nonetheless, one is not departing from a Greenfield scenario and current processes and institutional players should serve as a solid basis for the successful execution of the transposition provisions that are being presented in this document.

In a nutshell the legislative measures that are to be transposed consequential to the transposition of the Directive provide for the following rights and obligations with a view to facilitating the rollout of high-speed broadband infrastructure⁴:

Access to existing infrastructure

Every network operator - that is, electronic communications operators or undertakings active in other utility sectors, such as electricity distribution or waste water treatment - will have the obligation to meet all reasonable requests for access to their infrastructure, for the purposes of high speed broadband deployment, as provided for in the Directive. Grounds for refusal include technical unsuitability, safety, public health or network security.

³ Member States are required to adopt and publish the national legislation to comply with the Directive by the 1 January 2016 and to ensure that such legislation becomes applicable as from the 1 July 2016.

⁴ Information on the key features of the Directive are derived from the EU press release 7119/14 Presse 108, dated 28 February 2014, entitled: [New measures to cut broadband costs agreed by the Council and the Parliament](#). See also [Directive 2014/61/CE on broadband cost reduction in a nutshell](#)

If no agreement on such access is reached within two months of the access request, any party can refer the issue to the competent national dispute settlement body for resolution within four months.

Access to infrastructure information

In order to be able to effectively plan the deployment of high-speed broadband, electronic communications operators will have the right to access through a single information point, the following minimum information concerning an infrastructure namely: location, route, type and current use, and a contact point. Similar information would be available about planned infrastructure work. The functions of the single information point may be performed by one or more national, regional or local bodies and these bodies may charge fees to cover their costs.

Where this information is not available through the single information point, the electronic communications operator may request such information directly from the network operator. Such network operators are also required to comply with reasonable requests for on-site surveys of specific elements of their infrastructure from public communications networks operators with a view to deploying high speed electronic communications networks.

If the question of access to information gives rise to a dispute, any party may refer the case to a national dispute settlement body, which will issue a binding decision. This does not affect the right of an aggrieved party of alternatively referring such a dispute for resolution before a court of law.

Advance information about their infrastructure

All public communications networks operators and utility networks operators must give advance information about their infrastructure to public communications network operators to facilitate access requests, including information about location, route, type and current use of their infrastructure and a contact point. This is subject to considerations such as network security and integrity, national security, public health or safety, confidentiality, operating and business secrets.

Advance notice of on-going or planned civil works

All public communications networks operators and utility networks operators must give advance notice of on-going or planned civil works including the location and the type of works, the network elements involved, the estimated start date of the works and their duration and a contact point, with a view to facilitating civil works co-ordination requests.

Coordination of civil works

Network operators will have the right to negotiate agreements on the coordination of civil works with electronic communications operators for the purpose of broadband deployment. This obligation will apply to direct or indirect civil works which are fully or partially financed by public means. Requests may be refused where they would entail additional costs for the original works (including due to delays), would impede control over the coordination of the works or where the request is not made within certain timeframes.

If no agreement on such civil works coordination is reached within one month, any party can refer the issue to the competent national dispute settlement body. While the parties must cooperate fully with the dispute settlement body, any party also has the possibility of alternatively referring the case to a court of law.

Significant harmonisation measures will apply to planning applications in respect of civil works required to deploy high speed electronic communications networks. All relevant information

concerning the conditions and procedures applicable for granting permission in respect of such matters must be available through a single information point. Timeframes for the granting of permissions must be stream-lined (with a four month indicative timeframe) and must provide for compensation measures for network operators who suffer damage as a result of non-compliance with these timelines.

Exemptions

There is the possibility to provide for certain exceptions to the obligations which are set out in the Directive for example in respect of the access obligation in relation to technical suitability, availability of space, safety and public health, integrity and security of the network, interference with other services or the existence of viable alternative means of wholesale access. In principle, however, the onus will be shifted to infrastructure providers to justify the application of an exemption.

National Dispute Resolution Bodies

The new obligations must be met in very tight timelines with the possibility of an aggrieved operator of referring a dispute to an independent disputes settlement body which may make binding decisions. The tasks of the national dispute settlement body may be undertaken by one or more competent bodies designated to undertake such tasks.

New buildings

All newly constructed buildings - and those undergoing major renovation - for which applications for building permission have been submitted after 31 December 2016 must be equipped with infrastructure intended to host or deliver broadband access services with speeds in excess of 30Mbps. The same obligation applies in respect of multi-dwelling buildings, such as apartments, which must be equipped with physical access points available to public communications network operators.

Important access obligations will also be imposed with respect to communications network access points. All the holders of a right to use a network access point and associated in-building communications infrastructure must meet all reasonable requests for access from public communications network operators under fair and non-discriminatory terms and conditions including price. Exemptions may be provided if any such obligation would lead to disproportionate costs in the case of specific types of buildings such as historic buildings and holiday homes.

The above-mentioned new infrastructure obligations will apply to the following network operators:

- entities providing or authorised to provide public communications networks;
- entities providing a physical infrastructure intended to provide a service of production, transport or distribution of:
 - gas;
 - electricity, including public lighting;
 - heating;
 - water, including disposal or treatment of waste water and sewage, and drainage systems (but excluding elements of water networks used for the provision of water intended for human consumption); and
- entities providing a physical infrastructure intended to provide transport services, including railways, roads, ports and airports.

The obligations imposed on network operators apply to their “physical infrastructure”, which includes any element of a network which is intended to host other elements of a network without becoming itself an active element of the network such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles. Cables, including dark fibre are not physical infrastructure within the meaning of the Directive.

The electronic communications operators' rights to access physical infrastructure under this Directive are consistent with the normal exercise of property rights, that is, the rights of the owner of the land or of the building where the infrastructure is located.

ENVISAGED INSTITUTIONAL ARRANGEMENTS TO CATER FOR THE REQUIREMENTS SET BY DIRECTIVE 61/2014/EU

Co-ordination of information on existing infrastructure and new deployments

The right to impose co-location on operators enjoying rights of way is already a prerogative of the transport regulator as stipulated in Article 4 of Chapter 81. This right predates EU legislation by quite a few years.

The Directive goes a step beyond by making the right to co-location as one automatically enjoyed by electronic communications operators, with the precise objective of facilitating the deployment of high-speed broadband. In so doing, the Directive also provides more focus and detail as to how co-location should take place in such instances. Thus it also provides for organisational arrangements and information flows, notably the existence of the Single Information Point that receives and co-ordinates infrastructure-related information from the various utility networks, for the purpose of facilitating high speed network roll-out.

Coordination of works and the laying of infrastructure is handled by Transport Malta (TM). TM effectively presents the 'best fit' with the organisational requirements mooted in the Directive. It already carries out a sizeable number of infrastructure co-ordination activities as part of its road building and maintenance function. In the draft legislation, this organisation is referred to as the 'competent infrastructure regulator', which organisation effectively has the role of the Single Information Point mooted in the Directive.

Dispute settlement Forum

Another key component of this proposal is the setting up of a dispute settlement forum, as contemplated by the Directive, in order to deal with inter-utilities operators' disputes. The Directive contemplates fast resolution timeframes (varying from two to four months for resolution (bar exceptional circumstances), thus it was felt that only a specialised adjudicative forum for the purpose could fit the bill.

The Utilities Networks Dispute Board (UNDB) being proposed for the purpose, has been modelled along the lines of the Administrative Review Tribunal (ART) and the Competition and Consumer Appeal Tribunal. The aforesaid UNDB being proposed will be a specialised adjudicative tribunal for all intents and purposes and would have with regard to certain aspects similar powers to those of the First Hall of the Civil Court.

Cross-entity Advisory Body

Another body that is being proposed is an advisory body composed of the various sector regulators and government bodies involved in one way or another in infrastructure coordination. This body is not mandated in the Directive but the various requirements prescribed therein implicitly necessitate the setting up of such an advisory entity, which would provide policy and technical input to the envisaged infrastructure regulator, in relation to the various utility networks involved.

The role of this advisory body is thus intended to be that of assisting the competent infrastructure regulator providing it with any relevant information or advice as necessary. This body can also provide technical input to the UNDB as necessary when the latter is dealing with any disputes.

Envisaged members of the advisory body are: TM (chairing), MCA, MRA, MEPA, the Government Property Department and the Local Councils Department. The list is not necessarily exhaustive. Notwithstanding the establishment of this body, advice can also be sought from other government entities which are not members of the aforesaid body.

The prerogative for the setting up of this advisory body resides with the Minister responsible for Infrastructure.

In-building Infrastructure

The Directive provides for permit applications for all new buildings or major refurbishments to buildings, submitted after 1 January 2017 to include in-building infrastructure for electronic communications, as in the case of water and electricity. The relevant entity in Malta that will deal with the standards in this context is the Building Regulation Board.

Disputes on access rights by electronic communications network operators to in-building infrastructure can also ultimately be referred to the above mentioned disputes board.

PROPOSED LEGISLATIVE CHANGES

Proposed changes to the existing Utilities and Services (Regulation of Certain Works) Act, (Chapter 81)

This will comprise the largest portion of the transposition, which will complement the existing legislation, through the addition to the existing Act of a new Part III titled “Facilitating High-Speed Electronic Communications Networks”. The transposition dovetails quite neatly with the Chapter 81 since the latter also deals with co-location on passive infrastructure across utilities and co-ordination of works.

As for the current provisions of Chapter 81, the envisaged changes essentially deal with a revised part on the definitions reflecting also those definitions resulting from a transposition of the Directive coupled with amendments to current definitions in the existing law as well as dovetailing some processes and relative timelines.

One significant addition to the existing Chapter 81 is the inclusion of the rationale for the imposition of obligations on operators having rights of way by TM, namely on the grounds of town and country planning, public security, environment protection and public health. This serves to give more clarity as to when it is necessary for TM to take the necessary measures in order to facilitate the coordination of public works.

Another change is the increase in the quantum of the amount in relation to fines for unlawful resistance to affixing of wiring by operators from the current maximum of two hundred and thirty two Euros and ninety four cents (€232.94), or imprisonment for a term not exceeding one month, or to both such fine and imprisonment, to a fine not exceeding five thousand Euros (€5,000). This should hopefully serve as a deterrent in any illegal interference that interferes with infrastructure deployment works. These measures have to be seen in the light of the rights of owners of private property, also contained in Chapter 81.

Proposed new regulations under the Building Regulations Act, (Chapter 513)

Article 8 of the Directive, which deals with the introduction of in-building infrastructure as from January 2017, will be transposed in the form of regulations made under the Building Regulation Act, which in the Schedule (paragraph 6.6 thereof) provides for the drawing up of regulations in relation to “electronic communications services installations, ducts, ancillary fixed equipment and materials associated therewith”.

Proposed changes to the Electronic Communications (Regulation) Act, (Chapter 399)

Article 9 of the Directive, dealing with access rights of operators to in-building infrastructure, will be transposed by amending Chapter 399 whereby the current article 12 will be substituted with a new provision reflecting relating to the sharing of wiring obligations.

SUBMISSION OF COMMENTS

Submissions on the proposed changes to the various laws coupled with the making of new regulations are hereby being invited. Where feasible the text of the implementing legislation adopts similar wording as that of the Directive. In some instances the implementing legislation may have been drafted in a way that uses language that differs from the wording of the Directive in order to clarify its meaning for legal or domestic policy reasons.

Any persons interested in making submissions are to ensure that their submissions reach:

The Permanent Secretary

Office of the Permanent Secretary of the Ministry for the Economy, Investment and Small Businesses
or

the Permanent Secretary

Office of the Permanent Secretary of the Ministry for Transport and Infrastructure

by not later than 6th November, 2015.

These Offices can also be reached by e-mail at: consultation.meib@gov.mt

ANNEX I: PROPOSED LEGISLATIVE CHANGES TO CHAPTER 81

NOTE: This draft Act is colour-coded for ease of reference:

BLUE TEXT: provisions implementing Directive 61/2014/EU

RED TEXT: proposed changes to existing provisions of Cap. 81

BROWN TEXT: new text that does not bear comparison with the current Cap. 81

GREEN TEXT: any other changes, including changes indirectly emanating from Directive 61/2014/EU

BLACK TEXT: original text of Cap. 81

A BILL

entitled

An Act to amend the Utilities and Services (Regulation of Certain Works) Act, to implement measures to reduce the cost of deployment of high-speed electronic communications networks, and to make provision with respect to matters ancillary thereto or connected therewith.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
Short title and commencement.	1. (1) The short title of this Act is the Utilities and Services (Regulation of Certain Works) (Amendment) Act, 2015, and this Act shall be read and construed as one with the Utilities and Services (Regulation of Certain Works) Act	I. The short title of this Act is Utilities And Services (Regulation of Certain Works) Act.

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>hereinafter referred to as the “principal Act”.</p> <p>(2) This Act shall come into force on such date as the Minister responsible for infrastructure may by notice in the Gazette appoint, and different dates may be appointed for different purposes and different provisions of this Act.</p>	
Purpose.	<p>2. The Purpose of this Act is to amend the Utilities and Services (Regulation of Certain Works) Act, to implement Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks, the regulation of certain works in connection with utilities and other services and to amend other existing laws that relate to such measures.</p>	
Addition of subtitle before article 1 of the principal Act.	<p>3. Before article 1 of the principal Act there shall be added the following:</p> <p style="text-align: center;">“PART I</p> <p style="text-align: center;">PRELIMINARY”</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
<p>Substitution of article 2 of the principal Act.</p>	<p>4. Article 2 of principal Act shall be substituted with the following:</p> <p>“2. (1) In this Act unless the context otherwise requires:</p> <p>“access point” means a physical point, located inside or outside the building, accessible to undertakings providing or authorized to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available;</p> <p>“bodies governed by public law” means bodies that have all of the following characteristics:</p> <ul style="list-style-type: none"> (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; (b) they have legal personality; and (c) they are financed, in full or for the most part, by the State, or regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law; <p>“civil works” means every outcome of building or civil</p>	<p>2. In this Act -</p> <p>"electrical power and electronic communications networks"</p> <p>includes any electrical power or communication line or instrument however so described used for the supply of power or for electronic communications;</p> <p>"electronic communications networks" and "electronic communications service" shall respectively have the same meanings as under the Electronic Communications (Regulation)Act;</p> <p>"Minister" means, except for the purposes of article 11, the Minister responsible for energy or the Minister responsible for telecommunications as the case may be;</p> <p>"owner" includes occupier and user;</p> <p>"Regulator", in relation to a public utility or service, means -</p> <p>(a) in the case of works in connection with the supply of energy, the person or authority designated as such</p> <p>Regulator by the Minister;</p> <p>(b) in the case of works in connection with any electronic communications service and, or electronic</p>

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
<p>Cap. 513.</p>	<p>engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function and entails one or more elements of a physical infrastructure;</p> <p>“competent infrastructure regulator or regulators ” means such public sector body or bodies responsible for the infrastructure regulation as may be listed in the First Schedule to this Act, which Schedule may from time to time be amended by the Minister responsible for infrastructure by means of a notice in the Government Gazette;</p> <p>“competent authority or authorities for permit granting” means such public sector body or bodies responsible for the granting of civil works permits;</p> <p>“competent utility regulator or regulators” means any such public sector body or bodies responsible at law for the regulation of those utility services listed in accordance with the Third Schedule to this Act, which list shall state the authority responsible for the regulation of each of the different utility services and, where applicable the networks therein listed:</p> <p>Provided that this Schedule may from time to time be amended by the Prime Minister by notice in Gazette;</p>	<p>communications networks, the Malta Communications Authority as established under the Malta Communications Authority Act;</p> <p>(c) in the case of works in connection with any other services, the person or authority designated by the Minister as Regulator in relation to any such service or group of services;</p> <p>"tenement" means any tenement and includes any road, path, building, or water.</p>

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
Cap.399.	<p>“Dispute Resolution Board” or “Board” means the Utilities Networks Dispute Resolution Board established under Part IV of this Act;</p> <p>“electronic communications network” and “electronic communications service” shall respectively have the same meaning as under the Electronic Communications (Regulation) Act;</p> <p>“energy” includes electrical energy, fuel, heat when transmitted as a commercial activity, and energy derived from renewable sources;</p> <p>“high-speed electronic communications network” means an electronic communications network which is capable of delivering broadband access services at speeds of at least thirty Mbps:</p> <p>Provided that the Minister responsible for electronic communications may by notice in the Gazette vary such speeds;</p> <p>“high-speed-ready in-building physical infrastructure” means in-building physical infrastructure intended to host elements or enable delivery of high-speed electronic communications networks;</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>“in-building physical infrastructure” means physical infrastructure or installations at the end-user’s location, including elements under joint ownership, intended to host wired and, or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;</p> <p>”major renovation works” means building or civil engineering works at the end-user’s location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, including the common parts, and requiring a building permit;</p> <p>“network operator” means an undertaking providing or authorized to provide public communications networks as well as an undertaking providing a physical infrastructure intended to provide:</p> <p>(a) a service of production, transport or distribution of:</p> <ol style="list-style-type: none"> I. gas; II. electricity, including public lighting; III. heating; IV. water, including disposal or treatment of waste and sewage, and drainage services; 	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>(b) transport services, including roads, ports and airports;</p> <p>“network” means any physical infrastructure utilised by a network operator;</p> <p>"network termination point" means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to a subscriber number or name;</p> <p>“owner” includes occupier and user;</p> <p>“permit” means an explicit or implicit decision of a competent authority for permit granting following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works;</p> <p>“physical infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna buildings, towers and poles:</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
S.L. 449.57.	<p>Provided that cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption as defined in regulation 3 of the “Water Intended for Human Consumption Regulations” are not physical infrastructure within the meaning of this Act;</p> <p>“public sector body” means a state, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law;</p> <p>“Single Information Point” means the public entity appointed under article 19 to perform the functions of a single point of contact;</p> <p>“tenement”: means any tenement whether private or public and includes any road, path, building or construction however so described;</p> <p>“Tribunal” means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act;</p> <p>“undertaking” unless stated otherwise in this Act, means an undertaking providing or authorized to provide public communications networks;</p> <p>“utilities” includes electronic communications services, gas, electricity including public lighting, heating, water</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
Cap. 490.	<p>including disposal or treatment of waste and sewage, and drainage systems, transport services including roads, ports and airports, and such other services as the Minister responsible for infrastructure may by notice in the Gazette designate as “utilities” for the purposes of this Act; and</p> <p>“Utilities Committee” means the Utilities Services Advisory Committee established under article 23.</p> <p>(2) The words “the Authority for Transport in Malta” wherever they occur in the principal Act shall be substituted with the words “the competent infrastructure regulator”.</p>	
Deletion of article 3 of the principal Act.	5. Article 3 of the principal Act shall be deleted.	3. The electrical power and electronic communications networks in Malta and any other service for which a Regulator is designated under this Act shall be regulated by the provisions of this Act.
Addition of a subtitle before article 4 of the principal Act.	<p>6. Before article 4 of the principal Act there shall be added the following subtitle:</p> <p style="text-align: center;">“PART II</p> <p style="text-align: center;">REGULATION OF UTILITY INFRASTRUCTURE ACCESS”</p>	
Amendment of article 4 of the principal Act.	<p>7. Article 4 of the principal Act shall be amended as follows:</p> <p>(a) Sub-article (1) thereof shall be renumbered as article</p>	4. (1) For the purposes of this Act, it shall be lawful for the Malta Transport Authority to order that cables and wires be placed or other works be carried out either below, above or by the side of any tenement and that trenches, pits, poles, stays, brackets and all other

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>4;</p> <p>(b) Sub- articles (2) to (11) thereof shall be deleted;</p> <p>(c) Article 4 thereof as renumbered shall be amended as follows:</p> <p>(i) the words in the marginal note thereto “Power of the Authority for Transport in Malta” shall be substituted with the words “Power to order placing of cables etc”;</p> <p>(ii) the words “the electrical power and telecommunications systems” shall be substituted with the words “utilities networks”.</p>	<p>accessories essential to the proper working of the electrical power and telecommunication systems be cut, placed, erected in or affixed to any tenement; and any such order shall be notified to the owner of the said tenement at least ten days prior to the carrying out of any of the works aforesaid.</p>
<p>Addition of new articles 4A to 4E in the principal Act.</p>	<p>8. After article 4 thereof there shall be inserted the following:</p>	
<p>“Power to order collocation etc.</p>	<p>4A. (1) The competent infrastructure regulator may order the collocation, use or sharing of the same facilities on, over or under public or private property in relation to any cables, wires or other accessories, however so described, used or to be used for the provision of any utilities by a provider of any such utilities in any buildings, entries to buildings, trenches, pits, ducts, conduits, manholes, cabinet or on any poles, masts, antennae, towers or other supporting constructions, stays or brackets, cut, placed, erected or affixed</p>	<p>(2) The Malta Transport Authority may, after consultation with the Malta Communications Authority, also order the collocation or the use of the same facilities in relation to any cables, wires or other accessories used or to be used for the provision of any electronic communications service or any other any utilities or services by a provider of such electronic communications service or other utilities or services in any trenches, pits, ducts or on any poles, stays or brackets, cut, placed, erected or affixed by another provider of an electronic communications service or of other utilities or services; and any such</p>

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	<p>by another provider of any such utilities:</p> <p>Provided that the competent infrastructure regulator may order the taking of such measures as it may consider necessary to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town planning and country objectives. In doing so the competent infrastructure regulator may also provide for rules of apportioning the costs of facility or property sharing.</p> <p>(2) An order under sub-article (1) may be issued by the competent infrastructure regulator acting of its own initiative or following the written request of a competent utility regulator who considers the issue of such an order necessary for the provision of a utility service:</p> <p>Provided that before deciding whether to issue an order the competent infrastructure regulator shall where appropriate in writing consult with the competent utility regulator or regulators as the case may be:</p> <p>Provided further that no such order shall be issued if it relates to a dispute lodged before the Dispute Resolution Board under this Act, or to an appeal before the competent appellate forum contesting a final decision issued by that Board on any such dispute lodged before it.</p>	<p>order shall be notified to the provider who shall have erected or affixed the facilities to be the subject of collocation or to be so used, at least ten days prior to the carrying out of any of the works aforesaid:</p> <p>Provided that the Malta Transport Authority shall before issuing an order under this sub article, afford a reasonable opportunity to all interested parties to express their views.</p>

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	<p>(3) The competent infrastructure regulator shall notify any order made under sub-article (1) to all the interested parties including the provider of the utility service impacted by the order of collocation, at least ten days prior to the carrying out of any of the works aforesaid:</p> <p>Provided further that the competent infrastructure regulator shall before issuing any such order afford such reasonable opportunity as it may consider appropriate in the circumstances to all interested parties to express their views in writing.</p> <p>(4) Any measures taken by the competent infrastructure regulator in accordance with this article shall be objective, transparent, non-discriminatory, and proportionate, and where appropriate, these measures shall be carried out in coordination with the competent utility regulator or regulators and any other relevant public sector body.</p>	
<p>Coming into effect of orders etc.</p>	<p>4B. An order issued in accordance with article 4 or article 4A shall have effect immediately on the lapse of the tenth day following its notification; and the recipient of the order shall thereupon fully, immediately and properly implement the same or allow the full, immediate and proper implementation thereof, and shall refrain from causing or continuing to cause any impediment or hindrance to the said</p>	<p>4 (3) An order made under subarticle (1) or (2) shall have effect immediately on the lapse of the tenth day following its notification; and the recipient of the order shall thereupon fully, immediately and properly implement the same or allow the full, immediate and proper implementation thereof, and shall refrain from causing or continuing to cause any impediment or hindrance to the said implementation:</p> <p>Provided that the implementation of an order made under sub-article</p>

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	<p>implementation:</p> <p>Provided that the implementation of any such order shall not be impeded, restricted or delayed by reason of any claim for charges made by the recipient of the order.</p>	<p>(2) shall not be impeded, restricted or delayed by reason of any claim for charges made by the recipient of the order pursuant to sub-article (4).</p>
<p>Charging for collocation and Dispute related thereto.</p>	<p>4C. (1) The recipient of an order made under article 4A shall be allowed to charge for the collocation or the use of the facilities affixed or erected by it at rates based on reasonable relevant costs. Charges for collocation or use of the same facilities shall be cost-oriented and shall not include charges for overheads such as marketing, personnel or maintenance costs, other than those directly incurred on the facilities used.</p> <p>(2) The recipient of an order made under article 4A shall submit its charges to the provider collocating or making use of the facilities affixed or erected by the said recipient within thirty days of commencement of collocation or use as aforesaid. If the provider collocating or making such use disagrees with such charges it may, within twenty days of receipt of the same, make a dispute before the Dispute Resolution Board which Board shall resolve any such dispute within the shortest time frame and in any case within two months from the date of receipt of the dispute except in exceptional circumstances in accordance with the provisions of article 32.</p>	<p>(4) The recipient of an order made under sub-article (2) shall be allowed to charge for the collocation in or the use of the facilities affixed or erected by it at rates which are based on reasonable relevant costs. Charges for collocation or use of the same facilities shall be cost-oriented and shall not include charges for overheads such as marketing, personnel or maintenance costs, other than those directly incurred on the facilities used.</p> <p>(5) The recipient of an order made under subarticle (2) shall submit its charges to the provided collocating or making use of the facilities affixed or erected by the said recipient within thirty days of commencement of collocation or use as aforesaid. If the provider collocating or making such use disagrees with such charges it may, within thirty days of receipt of the same, refer the matter to the Regulator</p> <p>(6) Upon receipt of any reference as aforesaid, the Regulator shall notify the parties concerned that the matter is under investigation, allowing them a reasonable time within which to produce relevant information and evidence and make representations. The Regulator shall, after examining the facts and representations placed before him</p>

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	<p>(3) The competent infrastructure regulator may following consultation in writing with the competent utility regulator or regulators, upon application by the recipient of an order made under article 4A, order the person allowed to collocate or to make use of the facilities affixed or erected by the said recipient to provide security for the payment of charges due hereunder in respect of such collocation or use in an amount and in such form as may be determined by the said Authority:</p>	<p>and such other information as he may require, determine the charges due to the recipient of an order made under subarticle (2):</p> <p>Provided that where the reference is made by a provider of an electronic communications service, in relation to any works concerning such service, the Regulator shall apply the provisions of the Electronic Communications (Regulation) Act on dispute resolution.</p> <p>(7) The Regulator may, upon application by the recipient of an order made under subarticle (2) order the person allowed to collocate or to make use of the facilities affixed or erected by the said recipient to provide security for the payment of charges due hereunder in respect of such collocation or use in an amount and in such form as may be determined by the Regulator.</p>
<p>Exercise of functions by the competent infrastructure regulator.</p>	<p>4D. (1) The competent infrastructure regulator in the exercise of its functions under this Act shall:</p> <p>(a) act on the basis of simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and shall in any case make a decision within four months from the application date;</p> <p>(b) follow the principles of transparency and non-discrimination in attaching conditions to any rights it may grant to a utility service provider; and</p> <p>(c) give reasons for its decisions:</p>	<p>(8) At any time when the members of the Malta Transport Authority are not appointed, the powers of the Authority under this article shall be exercisable by the Minister responsible for transport.</p> <p>(9) (SEE BELOW)</p> <p>(10) The Malta Transport Authority in the exercise of its functions under this article in so far as these relate to any works related to electronic communications, shall:</p> <p>(a) act on the basis of transparent and publicly available procedures,</p>

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	<p>Provided that the competent infrastructure regulator shall, in relation to any fees it may be authorized to impose by or under this Act relating to such works, ensure that fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose:</p> <p>Provided further that the competent infrastructure regulator shall, in relation to amendments that it may consider making to any rights, conditions and procedures relating to such works, ensure that any amendment is only made in objectively justified cases and in a proportionate manner. Before making any such amendment, the competent infrastructure regulator shall give notice in such manner as it considers appropriate of its intention, inviting interested parties including users and consumers, to make representations on the proposed amendments within a period of not less than thirty days as may be specified in the notice. The competent infrastructure regulator may in those circumstances which it considers to be exceptional, shorten such period:</p> <p>Provided further that the competent infrastructure regulator shall in writing consult with the competent utility regulator or regulators in relation to amendments that it may consider making to collocation orders which were previously issued.</p>	<p>applied without discrimination and without delay;</p> <p>(b) follow the principles of transparency and non-discrimination in attaching conditions to any rights it may grant to a provider of an electronic communications service; and</p> <p>(c) give reasons for its decisions:</p> <p>Provided that the Malta Transport Authority shall, in relation to any fees it may be authorised to impose by or under this Act relating to such works, ensure that such fees are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose:</p> <p>Provided further that the Malta Transport Authority shall, in relation to amendments that it may consider making to any rights, conditions and procedures relating to such works, ensure that any such amendment is only made in objectively justified cases and in a proportionate manner.</p> <p>Before making any such amendment the Malta Transport Authority shall give notice in such manner as it considers appropriate of its intention, inviting interested parties including users and consumers, to make representations on the proposed amendments within such period of not less than thirty days as may be specified in the notice. The Malta Transport Authority may in circumstances which it considers to be exceptional, shorten such period.</p>

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<p>Contestation of a regulatory decision.</p>	<p>4E. A person or a competent utility regulator aggrieved by any regulatory decision however so described taken under this Part may appeal to the Tribunal:</p> <p>Provided that any such person in appealing shall explain his juridical interest in impugning the decision appealed from:</p> <p>Provided further that where applicable the competent utility regulator which has an interest in the matter, shall also be notified with any appeal filed under this article and shall be entitled to intervene in such proceedings and make submissions thereon.”.</p>	<p>(11) A person providing electronic communications networks and, or services or associated facilities who is aggrieved by any decision taken under this article by the Malta Transport Authority or by the Regulator concerning any works relating to electronic communications, may, after having exhausted the remedy provided for in sub-articles (5) and (6) where applicable, appeal to the Communications Appeals Board established under the Malta Communications Authority Act:</p> <p>Provided that such a person in appealing shall also explain his juridical interest in impugning the decision appealed from:</p> <p>Provided further that the Malta Communications Authority shall also be notified with any appeal filed under this sub-article and shall be entitled to make submissions thereon. The provisions of Part VIII of the Malta Communications Authority Act, relating to the hearing of appeals by the Communications Appeals Board from decisions of the Malta Communications Authority shall apply <i>mutatis mutandis</i> to appeals filed under this article.</p>
<p>Amendment of article 5 of the principal Act.</p>	<p>9. In article 5 thereof the words “in the last preceding article” and “to the Court of Appeal” shall respectively be substituted by the words “in articles 4 and 4A” and “to the First Hall of the Civil Court.”.</p>	<p>5. Where the works contemplated in the last preceding article cause damage to a tenement or cause annoyance to the owner of the tenement, the owner may, within three months from the completion of the said works, apply to the Court of Appeal praying for the determination of the compensation which may be due in respect of such damage or annoyance:</p>

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		<p>Provided that –</p> <p>(a) no damage or annoyance entitling the owner to compensation shall be considered to arise from the fact that a cable, wire or other essential accessory has been placed, erected or affixed either below, above or by the side of any tenement, if such cable, wire or other accessory does not cause any inconvenience, or if such cable, wire or other accessory is run over a tenement at a height of not less than four and a half metres from the surface thereof, or, in the case of a building, at a height of not less than three metres from the level of the roof thereof;</p> <p>(b) no claim for compensation shall be deemed to arise from the mere fact that a cable or wire passes in close proximity to or is supported by a bracket affixed to the wall of a building, or that a pole or stay is fixed to the upper part of such wall for the purpose of attaching thereto a cable or wire at the requisite height, if, in either case, the said cable or wire does not cause a noise which may be distinctly heard inside the building when the doors and windows are open, or other inconvenience;</p> <p>(c) no claim for compensation shall be deemed to arise from the mere fact that one or more poles or other supports are erected in any tenement, or in any field or site, so long as the distance between the poles or supports is not less than thirty-six and a half metres, and no pole or support occupies more than one hundred and sixty square</p>

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		centimetres of ground.
Amendment of article 6 of the principal Act.	<p>10. Article 6 thereof shall be amended as follows:</p> <p>(a) In sub-article (1) thereof the words “to the regulator concerned” shall be substituted with the words “to the competent infrastructure regulator”;</p> <p>(b) In paragraph (c) of sub-article (2) thereof the words “to the regulator concerned” shall be substituted with the words “to the provider of the utility service concerned”;</p> <p>(c) Sub-article (3) thereof shall be substituted with the following:</p> <p>“(3) Before taking a decision further to any request under this article the competent infrastructure regulator in dealing with such a request, shall,</p> <p>(a) where necessary, consult in writing with the competent utility regulator or regulators, or, and</p> <p>(b) consult in writing with any persons who the competent infrastructure regulator considers may be effected in a negative manner giving such persons a reasonable opportunity to make their submissions in writing.”.</p>	<p>6. (1) The owner of any tenement affected by an order made under article 4 may, within the period of eight days from the date of the said order, apply to the regulator concerned requesting that the route of the proposed cable or wire be diverted in such a way as to obviate the necessity of cutting, placing, erecting or affixing any trench, cable, wire, pole, stay, bracket or other essential accessory, in, over or upon the said tenement.</p> <p>(2) Such a request shall be granted provided –</p> <p>(a) the route, if diverted, will function with equal efficiency as the proposed route, and will not be more liable to damage from any cause whatsoever; and</p> <p>(b) the diversion of the proposed route will not interfere with other property or give rise to a claim for compensation under article 5; and</p> <p>(c) the diversion of the proposed route will not entail a greater expense to the regulator concerned either for its original construction or its subsequent repair and maintenance.</p> <p>(3) Any person who deems himself aggrieved by the decision of the regulator may, by an application, appeal therefrom to the Court of Appeal.</p>

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Addition of a new article 6A.	11. After article 6 thereof there shall be added the following:	
“Application of article 471 of Cap. 16.	6A. For the purpose of inspecting, testing or maintaining in good state of repair any work carried out under this Act, the provisions of article 471 of the Civil Code shall apply.”.	4(9) For the purpose of inspecting, testing or maintaining in good state of repair any work carried out under this article, the provisions of article 471 of the Civil Code shall apply.
Substitution of article 7 of the principal Act.	12. Article 7 thereof shall be substituted with the following:	
“Where owner of tenement may ask for removal of cable etc	<p>7. (1) Where the owner of a tenement in, over or upon which there is any cable, wire, pole, stay, bracket or other essential accessory, intends to make alterations in the tenement and such alterations cannot be effected unless:</p> <p>(i) The cable, wire, pole, stay, bracket or other essential accessory is temporarily or permanently removed; or</p> <p>(ii) The position of such cable, wire, pole, stay or bracket or other essential accessory cannot be changed;</p> <p>Then the owner may request that such work be temporarily or permanently removed, or else that the position</p>	<p>7. The owner of a tenement in, over or upon which there is any cable, wire, pole, stay, bracket or other essential accessory, upon a declaration on oath before a magistrate that he intends to make alterations in the tenement and that such alterations cannot be effected unless the cable, wire, pole, stay, bracket or other essential accessory be temporarily or permanently removed or unless the position of such cable, wire, pole, stay, bracket or other essential accessory be changed, may require that such work be temporarily or permanently removed or that the position of such work be changed, notwithstanding that the owner had given his consent for the execution of the work or had received compensation in terms of this Act:</p> <p>Provided that the owner shall in all cases give three months notice of his intention to effect the alterations aforesaid:</p>

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	<p>of such work be changed, this notwithstanding that the owner had given his consent for the execution of the work or had received compensation in terms of this Part.</p> <p>(2) A request under sub-article (1) shall be made by application before the First Hall of the Civil Court whereby the owner shall state under oath why in accordance with the provisions of sub-article (1) the request is being made:</p> <p>Provided that the owner in filing such a request shall:</p> <p>(a) notify the competent infrastructure regulator, any competent utility regulator or regulators where applicable, and any network operator who may be effected in a negative manner ; and</p> <p>(b) give three months notice of his intention to affect the alterations aforesaid.</p> <p>(3) A network operator may, within twenty days from notification of a request made under this article, contest such request only if it can prove that the owner has no other reasonable means of making the alterations and that it shall be effected in a negative manner if the request is upheld:</p> <p>(4) If the request under this article is not contested, the owner may without any further notice proceed with the</p>	<p>Provided also that the owner who makes the request shall refund any compensation which he may have received.</p>

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	<p>alterations on lapse of the three month notice period referred to in paragraph (b) of sub-article (2):</p> <p>Provided that the owner shall, where his request has not been contested, or if contested the contestation thereof has been rejected, refund any compensation which he may have received.”</p>	
Amendment of article 8 of the principal Act.	<p>13. In article 8 thereof the words “and telegraphic communications systems” shall be substituted with the words “and electronic communications networks”.</p>	<p>8. Every work carried out before the commencement of this Act in, over or upon any tenement in connection with the fixed electrical power and telegraphic communication systems without any protest on the part of the owner of the tenement shall be deemed to have been so carried out with the consent of the owner and shall not entitle the owner of the tenement to any compensation, notwithstanding that the provisions of this Act shall not have been observed.</p>
Amendment of article 9 of the principal Act.	<p>14. In article 9 thereof the words “to a fine (<i>multa</i>) not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) or imprisonment for a term not exceeding one month or to both such fine and imprisonment” shall be substituted with the words “five thousand euro (€5000).”.</p>	<p>9. Whosoever resists or obstructs any person authorized to enter any tenement in connection with the execution of his duties under this Act, shall be liable, on conviction, to a fine (<i>multa</i>) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.</p>
Amendment of article 10 of the principal Act.	<p>15. In article 10 thereof the words “telegraphic communications systems” and “to a fine (<i>multa</i>) not exceeding two hundred and thirty-two euro and ninety-four cents (€232.94) or imprisonment for a term not exceeding</p>	<p>10. Any person who wilfully interferes with or causes damage of any works connected with the fixed electrical power and telegraphic communication systems in Malta, shall be liable to a fine (<i>multa</i>) not exceeding two hundred and thirty-two euro and ninety-four cents</p>

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	three months or to both such fine and imprisonment:" shall be substituted respectively with the words "electronic communications networks" and "to a fine (<i>multa</i>) not exceeding five thousand euro (€5000):".	(232.94) or to imprisonment for a term not exceeding three months or to both such fine and imprisonment: Provided that nothing in this Act shall prevent a prosecution under any other law, but so that a person shall not be punished twice for the same offence.
Deletion of articles 11 and 12 of the principal Act	16. Articles 11 and 12 of the principal Act shall be deleted.	
Amendment of article 13 of the principal Act.	17. In article 13 of the principal Act the words "with article 11" shall be substituted with the words "with article 36."	
Addition of a new Part III and IV, and articles 14 to XX.	18. Immediately after article 13 as amended of the principal Act there shall be added the following new Parts:	
	"PART III FACILITATING HIGH-SPEED ELECTRONIC COMMUNICATIONS NETWORKS"	

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<p>Access to existing physical infrastructure.</p>	<p>14. (1) A network operator shall meet all reasonable requests made in writing by an undertaking requesting access to its physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of high-speed electronic communications networks:</p> <p>Provided that the undertaking concerned shall in its request specify the elements of the project for which the access is requested, including a specific time frame:</p> <p>Provided further that nothing in this Part shall be construed as prohibiting network operators from offering access to their physical infrastructure.</p> <p>(2) Any refusal of access following a request made in accordance with sub-article (1) shall be based on objective, transparent, and proportionate criteria including but not limited to:</p> <ul style="list-style-type: none"> (a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed electronic communications networks referred to in sub-article (1); (b) availability of space to host the elements of the high-speed electronic communications networks referred to in sub-article (1), including that the future needs for space of the network operator are sufficiently demonstrated; (c) safety and public health concerns; 	

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	<p>(d) integrity and security of any network, in particular of critical national infrastructure;</p> <p>(e) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure;</p> <p>(f) the availability of viable alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks, provided that such access is offered under fair and reasonable terms and conditions.</p> <p>(3) The network operator when giving its refusal shall in writing state its reasons for refusing the request, which reasons must be given within two months from the date of receipt of the complete request for access.</p> <p>(4) Where access is refused or an agreement on specific terms and conditions, including price, has not been reached within two months from the date of receipt of the complete request for access, then either party may file a dispute with the Dispute Resolution Board which dispute shall be submitted in writing to the Board within twenty days from the lapse of the two months period referred to in this sub-article.</p> <p>(5) The Dispute Resolution Board shall, in determining any dispute, referred to it in accordance with this article</p>	

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<p>Cap. 399.</p>	<p>taking into account the principle of proportionality, issue a binding decision to resolve the dispute, including the setting of fair and reasonable terms and conditions, including price where appropriate:</p> <p> Provided that where the dispute relates to access to the infrastructure of an electronic communications network provider, the Board shall, where appropriate, take into account the objectives set out in article 4 of the Electronic Communications (Regulation) Act:</p> <p> Provided further that any price set by the Board shall ensure that the access provider has a fair opportunity to recover its costs and shall take into account the impact of the requested access on the business plan of the access provider, including the investments made by the network operator to whom access is requested, in particular in the physical infrastructures used for the provision of high-speed electronic communications services.</p> <p> (6) The Dispute Resolution Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within four months from the date of the receipt of the complete request, except in exceptional circumstances in accordance with the provisions of article 32.</p> <p> (7) The provisions of this article shall be without</p>	

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	prejudice to the right to property of the owner of the physical infrastructure in cases where the network operator is not the owner, and to the right to property of any other third parties, such as landowners and private property owners.	
Transparency concerning physical infrastructure.	<p>15. (1) An undertaking in the course of requesting access to physical infrastructure in accordance with article 14(1), has the right to access, upon request, the following minimum information concerning the existing physical infrastructure of any network operator:</p> <ul style="list-style-type: none"> (a) location, and route; (b) type and current use of infrastructure; and (c) a contact point: <p>Provided that the undertaking in doing so, shall specify the area in which it envisages deploying elements of the high-speed electronic communications networks:</p> <p>Provided further that the provision of any such information to the undertaking may be subject to any limitations consequential to the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets as may be determined by the competent infrastructure regulator.</p> <p>(2) A public sector body holding in electronic format by</p>	

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	<p>reason of its tasks, elements of the minimum information referred to in sub-article (1) concerning the physical infrastructure of a network operator, shall make such information available:</p> <p style="padding-left: 40px;">(a) through the Single Information Point by electronic means; and, or</p> <p style="padding-left: 40px;">(b) to an undertaking upon the request in writing of that undertaking, this without prejudice to the limitations stated in sub-article (1):</p> <p style="padding-left: 40px;">Provided that any update to that information or any new element of minimum information referred to in sub-article (1) received by the public sector body shall be made available to the Single Information Point within two months from the date of its receipt, which period of such two months may be extended by a further period not extending one month, where this is required to guarantee the reliability of the information provided:</p> <p style="padding-left: 40px;">Provided further that any information provided to the Single Information Point shall be updated forthwith by the entity responsible for the provision of such information which entity shall inform the Single Information Point accordingly.</p> <p style="padding-left: 40px;">(3) Minimum information made available to the Single Information Point in accordance with sub-article (2) shall be accessible promptly, through the Single Information Point, in</p>	

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	<p>electronic format and under proportionate, non-discriminatory and transparent terms. Such access shall be made available through the Single Information Point by not later than the 1 January 2017.</p> <p>(4) Where the minimum information referred to in sub-article (1) is not available through the Single Information Point, then network operators shall provide access to such information upon the specific written request by an undertaking. In making such a request the undertaking shall specify the area envisaged for the deployment of network elements:</p> <p>Provided that access to information shall be granted within two months from the date of receipt of the written request under proportionate, non-discriminatory and transparent terms without prejudice to the limitation under sub-article (1).</p> <p>(5) Upon the specific written request of an undertaking, a network operator shall meet reasonable requests for on-site surveys of specific elements of its physical infrastructures. In making such a request the undertaking shall specify the elements of the network concerned with a view to deploying network elements:</p> <p>Provided that on-site surveys of the specified network</p>	

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	<p>elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the date of receipt of the written request, without prejudice to the limitations in sub-article (1).</p> <p>(6) In the event of a dispute arising in connection with the rights and obligations provided for in this article, either party may refer the dispute to the Dispute Resolution Board which shall, after taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible timeframe and in any case within two months, except in exceptional cases in accordance with article 32.</p> <p>(7) The Single Information Point following consultation with any competent utility regulator or regulators as the case may be and such other public sector body or bodies as it may consider necessary, may provide for exemptions from the obligations in sub-articles (1) to (5) in the case of existing physical infrastructures considered not technically suitable for the deployment of electronic communications networks or in the case of critical infrastructure. In doing so it shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make any written submissions within such reasonable time as it may establish.</p> <p>(8) An undertaking which obtains any information</p>	

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	pursuant to the provisions of this article shall, where appropriate, ensure that the information so acquired is treated with due consideration to confidentiality, and operating and business secrets.	
Coordination of civil works.	<p>16. (1) A network operator has the right to negotiate agreements concerning the coordination of civil works with undertakings with a view to deploying elements of high-speed electronic communications networks.</p> <p>(2) A network operator performing directly or indirectly civil works, either fully or partially financed by public means, shall comply with any reasonable written request to coordinate civil works on transparent and non-discriminatory terms, made by an undertaking, with a view to deploying elements of high-speed electronic communications networks, provided that:</p> <ul style="list-style-type: none"> (a) such request does not entail any additional costs, including because of additional delays, for the initially envisaged civil works; (b) such request does not impede control over the coordination of the works; and (c) the request to coordinate is filed as soon as 	

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	<p>possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting:</p> <p>Provided that the Minister responsible for Infrastructure may make such regulations as he may consider necessary on apportioning the costs associated with the coordination of civil works. In doing so the Minister shall consult with the competent utility regulator or regulators as the case may be and with any public sector body or bodies as he may consider necessary in the circumstances.</p> <p>(3) If an agreement on the coordination of civil works in accordance with sub-article (2) is not achieved within one month from the date of receipt of the formal written request to negotiate, then any aggrieved party may refer the dispute to the Dispute Resolution Board:</p> <p>Provided that any such reference to the Board must be filed within twenty days from the lapse of the one month period referred to in this sub-article.</p>	

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	<p>(4) The Dispute Resolution Board shall, in determining any dispute referred to it in accordance with this article, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute raised, including the setting of fair and non-discriminatory terms and conditions, and charges where appropriate:</p> <p>Provided that the Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within two months from the date of the receipt of the dispute except in exceptional circumstances in accordance with article 32.</p> <p>(5) The competent authority for permit granting may following consultation in writing with the competent utility regulator or regulators as the case may be and with such other public sector body or bodies as it may consider necessary, provide for exemptions from the obligations in this article for civil works of insignificant importance, such as in terms of value, size or duration, or in the case of critical national infrastructure:</p> <p>Provided that in so doing, the competent authority for permit granting shall give its reasons in writing and shall before taking a final decision, give any interested parties the</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>opportunity to make any written submissions on the draft exemptions within such reasonable time as it may establish.</p>	
<p>Transparency concerning civil works.</p>	<p>17. (1) In order to negotiate agreements on the coordination of civil works referred to in article 16, a network operator shall make available upon the specific written request of an undertaking, the following minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or a first submission to the competent authority for permit granting is envisaged in the following six months:</p> <ul style="list-style-type: none"> (a) The location and the type of works; (b) The network elements involved; (c) The estimated date for starting the works and their duration; and (d) A contact point: <p>Provided that the provision of any such information to the undertaking shall be subject to any limitations consequential to the security of the networks and their integrity, national security, public health or safety, confidentiality or operating and business secrets.</p> <p>(2) The undertaking shall in making its request, specify</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>the area in which it envisages deploying elements of high-speed electronic communications networks:</p> <p>Provided that within fourteen days from the date of receipt of the written request, network operators shall provide the requested information under proportionate, non-discriminatory and transparent terms.</p> <p>(3) The network operator may refuse the request made under sub-article (1) if:</p> <ul style="list-style-type: none"> (a) It had made the requested information publicly available in electronic format; or (b) Access to such information is ensured through the Single Information Point. <p>(4) The network operator shall make the requested minimum Information referred to in sub-article (1) available through the Single Information Point.</p> <p>(5) Any party may refer a dispute it may have in connection with the rights and obligations under this article to the Dispute Resolution Board which shall in determining any dispute referred to it in accordance with this article, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute raised, including the setting of fair and non-discriminatory terms and conditions and charges</p>	

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	<p>where appropriate:</p> <p>Provided that the Board shall resolve any dispute referred to it in accordance with this article within the shortest possible time frame and in any case within two months from the date of the receipt of the complete request except in exceptional circumstances in accordance with article 32, without prejudice to the possibility of any party to refer the case to court.</p> <p>(6) The competent authority for permit granting following consultation in writing with the competent utility regulator or regulators as the case may be and with any public sector body or bodies as it may consider necessary, provide for exemptions from the obligations in this article for civil works of insignificant value or in the case of critical national infrastructure. In doing so it shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make any written submissions on the draft exemptions within such reasonable time as it may establish.</p>	
Permit-granting procedure.	<p>18. (1) All relevant information concerning the conditions and procedures applicable for granting permits for civil works needed with a view to deploying elements of high-</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>speed electronic communications networks, including any information concerning exemptions applicable to such elements as regards some or all permits required under national law, shall be available through the Single Information Point .</p> <p>(2) An undertaking may by electronic means through the Single Information Point, submit applications for permits required for civil works which are needed with a view to deploying elements of high-speed electronic communications networks.</p> <p>(3) The competent authority for permit granting shall grant or refuse a permit within four months from the date of the receipt of a complete permit request, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or European Union law or of dispute resolution or litigation proceedings however so described:</p>	

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	<p>Provided that any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria:</p> <p>Provided further that exceptionally in duly justified cases, the deadline may be extended, which extension shall be the shortest possible in order to grant or refuse the permit.</p> <p>(4) An undertaking which has suffered damages as a result of non-compliance with deadlines under this article has the right to seek compensation in accordance with the applicable national legislation.</p>	
Single Information Point.	<p>19. (1) The functions of the Single Information Point under this Act shall be performed by the competent infrastructure regulator.</p> <p>(2) Any person which in accordance with this Act, is required to provide any information however so described, shall ensure that such information is provided to the Single Information Point in a timely manner and in accordance with</p>	

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	<p>any timeframes established in accordance with this Act, or in the absence of such time frames within such time frames as the Single Information Point may reasonably establish.</p> <p>(3) Any person who acts in breach of any requirement under this Part in so far as it relates to the provision of any information to the Single Information Point shall be liable to a fine (<i>multa</i>) not exceeding ten thousand euro (€10,000).</p>	
Notification of Commission when granting exemptions.	<p>20. (1) Where applicable any person or body which grants an exemption in accordance with the provisions of this Part shall forthwith in writing inform the Utilities Committee of the granting of such an exemption and where applicable any public sector body.</p> <p>(2) The Utilities Committee shall notify the European Commission of any exemptions granted in accordance with the provisions of this Act.</p>	
Provisions of the Electronic Communications (Regulation) Act	<p>21. The provisions of the Electronic Communications (Regulation) Act and of any regulations listed under the Fourth Schedule of this Act shall prevail over any of the provisions of this Part:</p>	

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<p>etc to prevail.</p> <p>Cap. 399.</p>	<p>Provided that the Minister responsible for electronic communications may, from time to time by notice in the Gazette, amend the list of regulations stated in the aforesaid Schedule.</p>	
<p>Establishment and role of the Utilities Services Advisory Committee.</p>	<p>22. (1) There shall be a body to be known as the Utilities Services Advisory Committee which body shall be appointed by the Minister responsible for infrastructure for a term, which may be renewed, of not less than one year and not more than three years, which body shall be composed of:</p> <p>(a) a chairman chosen by the Minister responsible for infrastructure from among persons with expertise of infrastructure utility sharing;</p> <p>(b) a representative of each utility regulator appointed by the respective utility regulator as may from time to time be listed in Third Schedule;</p>	

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	<p>(c) at least one person with proven expertise in utility infrastructure sharing.</p> <p>(2) The Utilities Committee shall perform any function that it may be required to undertake in accordance with this Act including:</p> <p>(a) the making of guidelines on any aspect regulated by this Act insofar as such guidelines relate to utility infrastructure access and, or the determination of any disputes related thereto including but not limited to guidelines:</p> <p>i. on the criteria for refusal of access to physical infrastructure;</p>	

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	<ul style="list-style-type: none"> ii. on the format of information requirements for requests to access a utility infrastructure; iii. on the format of the provision of information on the physical infrastructure of a network operator to the Single Information Point; iv. on the minimum information, if any, to be provided because of the security of the networks or their integrity, or because of national security, public health or safety, confidentiality or commercially sensitive information; v. to assist any adjudicative or regulatory body in determining any disputes however so described as may be referred to that body for 	

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	<p>determination under this Act;</p> <p>(b) advising on the making of rules on the apportioning of the costs related to the coordination of civil works;</p> <p>(c) where applicable dealing with requests for exemptions made under this Act; and</p> <p>(d) such other tasks as the Minister for infrastructure in line with the purposes of this Act may assign to it.</p>	
	<p>“PART IV</p> <p>UTILITIES NETWORKS DISPUTE RESOLUTION BOARD”</p>	
Appointment of the Utilities Networks Dispute Resolution Board.	<p>23. There shall be a dispute resolution board to be known as the Utilities Networks Dispute Resolution Board which Board shall exercise and perform the functions assigned to it by this Act and by any other law.</p>	
Composition of	<p>24. (1) The Dispute Resolution Board shall be composed of</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
<p>the Utilities Networks Dispute Resolution Board.</p>	<p>a President, who shall be a magistrate or an ex-magistrate, and two members selected by the President from a panel of ordinary members:</p> <p>Provided that if the President is an ex-magistrate his appointment shall be for term of five years and he shall vacate his office at the expiration of the term of the said appointment.</p> <p>(2) There shall be a panel of six ordinary members, all with at least ten years relevant experience, appointed by the President of Malta on the advice of the Prime Minister, from amongst persons having relevant qualifications in any one or more of the fields of expertise related to the matters regulated by this Act or that may from to time to time be referred to the Board for resolution.</p> <p>(3) In selecting the two ordinary members to sit on the Board under sub-article (1), the President shall take due account of the nature of the case and the market concerned.</p>	

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	<p>(4) The ordinary members of the Board shall be appointed for a term of five years which term of office shall not be renewable.</p> <p>(5) The ordinary members of the Dispute Resolution Board may resign their office by a letter addressed to the President of Malta. The resignation shall take effect when the letter signifying the resignation is received by the President of Malta or by any person authorized by him.</p> <p>(6) An ordinary member of the Dispute Resolution Board may not be removed from office except by the President of Malta acting on the advice of the Prime Minister on the ground of proved inability to perform the functions of his office whether arising from infirmity of body or mind or any other cause, or proved misbehaviour.</p> <p>(7) Notice of all appointments to the Dispute Resolution Board and of all other changes in its membership shall be</p>	

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	<p>published in the Gazette.</p> <p>(8) The Dispute Resolution Board shall be independent from all parties to the dispute in the performance of its functions, and the members thereof in the exercise of their functions shall act on their own individual judgement and shall not be subject to the direction or control of any person or authority.</p> <p>(9) The ordinary members of the Dispute Resolution Board shall not be precluded from the exercise of their respective professions.</p> <p>(10) The ordinary members of the Dispute Resolution Board shall receive such remuneration established in accordance with the Fifth Schedule to this Act, which remuneration shall not be altered during the tenure of their appointment to their disadvantage:</p> <p>Provided that the said Schedule may from time to time be</p>	

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	<p>varied by the Prime Minister:</p> <p>Provided further that any such remuneration shall be paid out of the Consolidated Fund without the necessity of any further appropriation.</p> <p>(11) A person shall not be qualified to be appointed or remain an ordinary member of the Dispute Resolution Board if:</p> <p>(a) he has been declared an undischarged bankrupt; or</p> <p>(b) he has been sentenced to imprisonment for six months or more by any court; or</p> <p>(c) he has been found guilty of any offence against this Act, any law relating to the regulation of any utility service or any regulations made under this Act or any such laws; or</p> <p>(d) he is a Member of the House of Representatives or of the European Parliament or of a Local Council.</p> <p>(12) An ordinary member of the Dispute Resolution Board shall, before the commencement of any case, declare any interest he may have in the proceedings and the President</p>	

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	<p>shall, where he considers that such interest may prejudice the independence of the member concerned appoint another member from the panel.</p> <p>(13) Where proceedings have commenced and no final decision has yet been delivered and the President or a member has ceased to be a member thereof or for any other reason is unable to perform the functions of his office, the President may elect to appoint another member from the panel in his stead and should it be strictly necessary for the proper determination of the dispute recommence proceedings, or continue to hear the dispute with only one ordinary member:</p> <p>Provided that where the term of appointment has expired and the ordinary member has not been reappointed, the ordinary member shall continue to hear the dispute until it is concluded.</p> <p>(14) The ordinary members of the Dispute Resolution Board, shall, during and after the term of office, act with integrity and not engage in any activity which would harm the proper administration of justice or which, due to knowledge gained from business secrets or other confidential information during the tenure of their office, would give rise to conflict of interest and harm the interests of any parties to the proceedings before the Board. Any person who acts in</p>	

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	<p>contravention of this sub-article shall be guilty of an offence against this Act and shall on conviction be liable to a fine (<i>multa</i>) of not less than five thousand euro (€5,000) and not more than twenty fifty thousand euro (€25,000), and the court may, in addition, award the punishment of temporary or perpetual general interdiction from occupying any public office.</p>	
<p>Conduct of proceedings and determination of disputes.</p>	<p>25. (1) Upon taking cognizance of a dispute, the Dispute Resolution Board shall notify the parties concerned of the matter under dispute, allowing them a reasonable time as may be determined by the Board to produce relevant information and to make their representations.</p> <p>(2) The Dispute Resolution Board shall in all instances endeavour to determine any dispute referred to it within the shortest possible time, and in any case in accordance with the specific time frames established under this Act or under any other applicable law under which it may be empowered to determine disputes:</p> <p>Provided that it shall be at the discretion of the Board on how it shall conduct proceedings before it. In particular the</p>	

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	<p>Board may, if it considers it appropriate in the circumstances, determine a dispute only on the basis of such written submissions and documentation as it may require, and it shall be at its discretion to determine whether oral hearings and, or on site visits are necessary:</p> <p style="padding-left: 40px;">Provided further that the Board shall in all instances abide with the principles of natural justice.</p> <p style="padding-left: 40px;">(3) The Dispute Resolution Board shall, after examining the facts and any representations submitted to it and such other information as it may require, determine the dispute.</p> <p style="padding-left: 40px;">(4) The Disputes Resolution Board may at its discretion whether of its own initiative or following a request of a party to the dispute if it considers such a request as being reasonable given the specific circumstances of the dispute, assist the parties in arriving at an amicable settlement on all or some of the issues in dispute before proceeding or continuing with the determination of the dispute:</p> <p style="padding-left: 40px;">Provided that in doing so the Board shall in all instances factor the need to settle the dispute in the shortest time possible and any negative impact that a party may suffer if</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>there is a delay in resolving the dispute:</p> <p>Provided further that an aggrieved party which has a dispute under this Part shall where feasible endeavour to settle any such dispute by seeking the mediation of the competent utility regulator or regulators as the case may be without prejudice to any timeframes established under this Part whereby an aggrieved party may be required to lodge a dispute before the Dispute Resolution Board.</p>	
<p>Registry of the Dispute Resolution Board.</p> <p>Cap. 12.</p>	<p>26. (1) The Registrar of Courts or any other person acting in his stead or on his behalf in accordance with the Code of Organization and Civil Procedure shall be the Registrar of the Dispute Resolution Board appointed in accordance with this Part.</p> <p>(2) All acts brought before the Dispute Resolution Board shall be kept in the Registry of the Inferior Courts which shall be the registry of the Board.</p> <p>(3) The Minister responsible for justice may by regulation under this Act establish:</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>(a) the fees that may be due to the Registry of the Dispute Resolution Board;</p> <p>(b) the fees that may be due to advocates, legal procurators and other persons representing the parties appearing before the Board; and</p> <p>(c) the fees that may be due to experts appearing before the Board:</p> <p style="padding-left: 40px;">Provided that until fees are prescribed by the Minister responsible for justice under paragraphs (a) to (c), the fees established in the Code of Organization and Civil Procedure shall apply.</p> <p>(4) The Registry of the Dispute Resolution Board shall, where applicable, keep both a non-confidential version, and where applicable when directed by the Board a confidential</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>version of the records of each dispute referred to the Board.</p> <p>(5) The records of the Dispute Resolution Board shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request:</p> <p>Provided that due regard shall be had to the protection of any confidential information and business secrets.</p> <p>(6) All acts shall be filed, issued and served in accordance with the provisions of the Code of Organization and Civil Procedure, subject to any rules made under this Act, or regulations made thereunder or unless the Minister responsible for justice shall by regulation otherwise prescribe.</p>	
<p>Personnel and sittings of the Dispute Resolution Board.</p>	<p>27. (1) The Registrar shall provide the necessary personnel for the holding of sittings of the Dispute Resolution Board. The officials so designated shall, in execution of their duties, enjoy and exercise all such powers as are vested by the Code of Organization and Civil Procedure in officials</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
Cap. 12.	<p>performing similar duties.</p> <p>(2) The sittings of the Dispute Resolution Board shall, where applicable be held on such days and at such times as shall be fixed by the President in the building of the Courts in Malta and, or in Gozo or in any such other place in Malta and, or in Gozo as the President may consider appropriate in the circumstances.</p>	
Power to make regulations relating to the procedure to be followed before the Dispute Resolution Board.	<p>28. (1) The Dispute Resolution Board shall have the powers and shall follow the procedures laid out in the provisions of this Act and any regulations made thereunder.</p> <p>(2) The Minister responsible for justice may make rules not inconsistent with this Act, and any regulations made thereunder, prescribing the procedures and the forms to be followed and used before the Dispute Resolution Board.</p> <p>(3) In the absence of provisions or rules as aforesaid, the Dispute Resolution Board shall regulate its own procedures.</p>	
Dispute Resolution Board may appoint experts or	<p>29. (1) The Dispute Resolution Board in determining any dispute referred to it, may:</p>	

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<p>require input from public sector bodies and power to summon witnesses.</p>	<p>(a) require any public sector body to provide any information or submit any report which the Board considers may be necessary to assist it in determining the said dispute; and, or</p> <p>(b) appoint a qualified expert in any areas falling within the remit of the Board, to report to the Board on any aspect of any dispute referred to the Board:</p> <p>Provided that the Board in requiring any such information and, or any such report, shall establish such time frames and such conditions as it may consider reasonable in the circumstances, including in the case of any such report as it may require in accordance with this article, the matters in relation to which it is seeking input from the said body or expert.</p> <p>(2) The Dispute Resolution Board may, through its President summon any person to appear before it and give evidence and produce documents, and the President shall have the power to administer the oath.</p>	
<p>Right of appeal before the Court</p>	<p>30. (1) Any party to a dispute referred to the Dispute Resolution Board who feels aggrieved with any decision given</p>	

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<p>of Appeal. Cap. 12</p>	<p>by the Board following its determination of a dispute referred to it including a decision of the Board given under article 34(2) imposing civil penalties provided for thereunder, may on a point of law contest such a decision before the Court of Appeal (Inferior Jurisdiction) as constituted in accordance with article 41(6) of the Code of Organisation and Civil Procedure by means of an application filed in the registry of that court within twenty days from the date of the decision of the Dispute Resolution Board.</p> <p>(2) The Minister responsible for justice may by regulation under this sub-article establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with appeals under this article:</p> <p>Provided that until such fees are so established, the fees in Schedule A to the Code of Organisations and Civil Procedure shall apply.</p>	
<p>Decision if appealed to stand unless Court of Appeal decides otherwise.</p>	<p>31. (1) The decision of the Dispute Resolution Board pending an appeal before the Court of Appeal (Inferior Jurisdiction) shall stand and shall be adhered to by all the parties to whom the decision applies.</p>	

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	<p>(2) The Court of Appeal (Inferior Jurisdiction) where it considers it to be appropriate, may, on the application of a party to the appeal, suspend in whole or in part the decision which is the subject of the appeal pending the final determination of the appeal. The Court of Appeal (inferior jurisdiction) in deciding whether or not to suspend the decision shall state its reasons and shall take into account all the relevant circumstances, including -</p> <p>(a) the urgency of the matter,</p> <p>(b) the effect on the party making the request if the application for suspension is not upheld, and</p> <p>(c) the effect on competition and, or on end-users if the application is upheld:</p> <p>Provided that a party, in making an application under</p>	

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	<p>this article, shall state the factual and legal grounds establishing a prima facie case for the suspension of the decision. The Court of Appeal (inferior jurisdiction), as the case may be, shall on receipt of any such application order the notification thereof to the other party or parties to the appeal affording them reasonable opportunity to make their response thereto:</p> <p>Provided further that the Court of Appeal (inferior jurisdiction) in determining any such application may include such conditions as it considers necessary in the circumstances.</p>	
<p>Time frame to determine a dispute may be extended in exceptional circumstances.</p>	<p>32. In those instances where the Act establishes that the maximum time frames for the resolution of a dispute referred to the Dispute Resolution Board may in exceptional circumstances be extended and the Board decides to extend the time frame, the Board shall in writing notify all the parties to the dispute accordingly, stating the reasons why the timeframe is being extended, the period of extension and when it envisages that the dispute shall be determined.</p>	
<p>Right to refer a dispute to court.</p>	<p>33. Any reference of a dispute to the Dispute Resolution Board under this Act shall be without prejudice to the right of a party to refer the dispute to a court:</p>	

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	<p>Provided that the Board shall not proceed to deal with a dispute if it results that a party to the dispute has referred the same dispute to another adjudicative forum however so described.</p>	
<p>Powers of the Dispute Resolution Board.</p> <p>Cap. 418.</p> <p>Cap. 12.</p>	<p>34. (1) The Dispute Resolution Board shall have all such powers as are, by the Code of Organization and Civil Procedure vested in the First Hall of the Civil Court.</p> <p>(2) The enforcement of the decisions of the Dispute Resolution Board in the manner provided for in the Code of Organisation and Civil Procedure, shall vest in the Board itself:</p> <p>Provided that the Board may on the application of an aggrieved party in whose favour a binding decision has been given, impose upon the party which has failed to comply with such a binding decision a daily penalty not exceeding one thousand euros (€1,000) for each day of non-compliance, which the Board may consider appropriate in order to ensure compliance with the said decision, which civil penalty shall be payable to the aggrieved party and shall continue running</p>	

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	<p>until such date as the Board determines that the party concerned has complied with the said decision:</p> <p>Provided further that any civil penalty imposed in accordance with this article shall be recoverable by the aggrieved party as a civil debt due to it.</p>	
<p>Right to seek civil damages.</p>	<p>35. The imposition of any civil penalties under article 34 on a party which fails to comply with any binding decision of the Dispute Resolution Board shall be without prejudice to the right of any aggrieved party in whose favour the said decision has been given, to seek civil damages in accordance with national law:</p> <p>Provided that if any such aggrieved party decides to seek such damages, the competent adjudicative forum in determining whether or not to award damages and where applicable the quantum of such damages, shall where it considers appropriate factor any such civil penalties as may have been awarded under this Part.</p>	
	<p>“PART V</p> <p>MISCELLANEOUS”</p>	
<p>Power to make regulations.</p>	<p>36. (1) Unless otherwise provided in this Act the Minister responsible for Infrastructure may, of his initiative or where</p>	

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	<p>he considers necessary after consultation with any other Minister or Ministers responsible for other public sector bodies, make, vary or revoke any regulations in relation to any matters dealt with under this Act or required for the carrying into effect of this Act including but not limited to the following:</p> <p>(i) any matter relating to rights of way including fees that may be charged for such rights;</p> <p>(ii) for the manner in which any trench, pit, pole, stay, bracket or other essential accessory in connection with fixed electrical power and, or electronic communications network in Malta shall be cut, placed, erected or fixed and generally for the proper working of any such networks however so described.</p> <p>(2) Any person who acts in contravention with any regulations made under this article shall be liable to a fine (<i>multa</i>) not exceeding ten thousand euro (€10,000).</p>	
Service of notice.	<p>37. Unless otherwise provided in this Act any service of notice however so described to be given to any person in accordance with this Act shall be addressed to that person and shall be given to the person concerned in any of the following ways:</p> <p>(a) by delivering it to the person;</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>(b) by leaving it at the address at which the person ordinarily resides or carries on business;</p> <p>(c) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on business;</p> <p>(d) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by registered post addressed to the person to that address;</p> <p>(e) in any case where the immediate giving of the notice is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the facsimile machine of the sender generates a message confirming successful transmission of the total number of pages of the notice or the facility of the sender for the reception of electronic mail generates a message confirming receipt of the electronic mail:</p> <p style="padding-left: 40px;">Provided that the provisions of paragraph (e) shall not apply to the notification of documents filed before the Tribunal, the Dispute Resolution Board or any Court however so described.</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p style="text-align: center;">FIRST SCHEDULE</p> <p style="text-align: center;">(Article 2)</p> <p>In accordance with provisions of article 2 of this Act, within the context of the definition of the words “competent infrastructure regulator” the following public sector body is designated a “competent infrastructure regulator”:</p> <p style="padding-left: 40px;">(1) The Authority for Transport in Malta (“TM”).</p>	
	<p style="text-align: center;">SECOND SCHEDULE</p> <p style="text-align: center;">(Article 2)</p> <p>In accordance with the provisions of article 2 of this Act, in the context of the definition of the words “competent utility regulator” the following public sector bodies are designated as “competent utility regulators”:</p> <p style="padding-left: 40px;">(1) The Malta Communications Authority (“MCA”) is responsible for the regulation of electronic communications services and networks;</p> <p style="padding-left: 40px;">(2) The Malta Resources Authority (“MRA”) is responsible for the regulation of energy services and networks and the regulation of water services</p>	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>and networks; and (3) The Authority for Transport in Malta (“TM”) is responsible for the exercise of regulatory functions relating to roads and to transport by air, rail, road or sea.</p>	
S.L. 399.28.	<p>THIRD SCHEDULE</p> <p>(Article 21)</p> <p>Regulations listed in accordance with the provisions of article 22 of this Act:</p> <p>(1) The Electronic Communications Networks and Services (General) Regulations.</p>	
	<p>FOURTH SCHEDULE</p> <p>(Article 24)</p> <p>The remuneration payable to the President and to the two ordinary members of the Dispute Resolution Board shall be as follows:</p> <p>(1) In the case of the President for:</p> <ul style="list-style-type: none"> • the first hour of a sitting or part thereof seventy five euro (€75), and • every subsequent hour or part thereof sixty- 	

	Proposed Legislative Changes	Existing Utilities And Services (Regulation of Certain Works) Act, Cap. 81
	<p>five euro (€65).</p> <p>(2) In the case of an ordinary member for:</p> <ul style="list-style-type: none"> • the first hour of a sitting or part thereof sixty euro (€60), and • every subsequent hour or part thereof fifty euro (€50). <p>Provided that in the case of any sittings which are held outside the venue designated for the holding of Board sittings, the fee due to the President and to the ordinary members shall be increased by ten euro (€10) per hour or part thereof.”.</p>	
<p>Amendment of other enactments.</p>	<p>19. The enactments in the First Column of the Schedule to this Act shall have effect subject to the amendments appearing relative thereto in the Second Column of the said Schedule.</p>	

ANNEX II: PROPOSED IN-BUILDING PHYSICAL INFRASTRUCTURE ACCESS TO ELECTRONIC COMMUNICATIONS SERVICES REGULATIONS

NOTE: This draft Act is colour-coded for ease of reference:

BLUE TEXT: provisions implementing Directive 61/2014/EU

GREEN TEXT: any other changes, including changes indirectly emanating from the Directive 61/2014/EU

	In-Building Physical Infrastructure Access to Electronic Communications Services Regulations
Citation and scope	<p>IN exercise of the powers conferred by article 6 of the Building Regulation Act, the Minister responsible for the building industry after consultation with the Building Regulation Board, has made the following regulations:</p> <p>1. (1) The title of these regulations is the In-Building Physical Infrastructure Access to Electronic Communications Services Regulations, 2015.</p> <p>(2) The scope of these regulations is to transpose in part the requirements under Article 8 of the Directive 2014/61/EU of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks and to give effect to its provisions.</p>
Interpretation	<p>2. (1) Unless otherwise stated in these regulations, the definitions prescribed in the Act shall apply.</p> <p>(2) In these regulations unless the context otherwise requires:</p> <p>“access point” means a physical point, located inside or outside the building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical</p>

Cap. 81	<p>infrastructure is made available;</p> <p>"the Act" means Building Regulation Act;</p> <p>"bodies governed by public law" means bodies that have all of the following characteristics:</p> <p>(a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;</p> <p>(b) they have legal personality; and</p> <p>(c) they are financed, in full or for the most part, by the State, or regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;</p> <p>"civil works" means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function and entails one or more elements of a physical infrastructure;</p> <p>"competent utility regulator or regulators" means any such public sector body or bodies responsible at law for the regulation of those utility services listed in accordance with the Third Schedule to the Utilities and Services (Regulation of Certain Works) Act;</p> <p>"high speed electronic communications network" means an electronic communication network which is capable of delivering broadband access services at speeds of at least 30 Mbps;</p> <p>"high-speed-ready in-building physical infrastructure" means in-building physical infrastructure intended to host</p>
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	<p>elements or enable delivery of high-speed electronic communications networks;</p> <p>“in-building physical infrastructure” means physical infrastructure or installations at the end-user's location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;</p> <p>“major renovation works” means building or civil engineering works at the end user's location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, including the common parts, and requiring a building permit;</p> <p>“network operator” means an undertaking providing or authorised to provide public communications networks as well as an undertaking providing a physical infrastructure intended to provide:</p> <p>(a) a service of production, transport or distribution of:</p> <ul style="list-style-type: none">(i) gas;(ii) electricity, including public lighting;(iii) heating;(iv) water, including disposal or treatment of waste water and sewage, and drainage systems; <p>(b) transport services, including railways, roads, ports and airports;</p> <p>"network termination point" means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to a subscriber number or name;</p>
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	<p>“physical infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles; cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption as defined in regulation 3 of the “Water Intended for Human Consumption Regulations” are not physical infrastructure within the meaning of these Regulations;</p> <p>“public sector body” means a state, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law; and</p> <p>“permit” means an explicit or implicit decision of a competent authority following any procedure under which an undertaking is required to take steps in order to legally carry out building or civil engineering works.</p>
<p>Requirements for newly constructed buildings or major renovation works.</p>	<p>3. (1) All newly constructed buildings at the location of an end-user, including elements thereof under joint ownership, or major renovation works concerning multi-dwelling buildings for which in either case applications for building permits have been submitted after 31 December 2016, must be equipped with the following:</p> <p>(a) a high-speed-ready in-building physical infrastructure, up to the network termination points; and</p> <p>(b) an access point.</p> <p>(2) Buildings equipped in accordance with this regulation, shall be eligible to receive the voluntary ‘broadband-ready’ label as may be issued by the Building Regulation Office. An architect or any other qualified person as established</p>

	<p>under these regulations shall be responsible to certify the installation in accordance with the obligations provided for in sub-regulation (1) of these Regulations and any technical guidance document that may be issued in connection with these Regulations. The Building Regulations Office may devise schemes that serve to publicly acknowledge the broadband-readiness of buildings in accordance with these regulations.</p> <p>(3) The Building Regulation Office may, after having consulted with the competent utility regulator or regulators as the case may be and with any other public sector body or bodies as it may consider necessary, provide for exemptions from the obligations provided for in sub-regulation (1) for categories of buildings such as, and in particular, single dwellings, or major renovation works in cases in which the fulfillment of those obligations is disproportionate, such as in terms of costs for individual or joint owners, or in terms of type of building, such as specific categories of monuments, historic buildings, holiday homes, military buildings or other buildings used for national security purposes:</p> <p style="padding-left: 40px;">Provided that in doing so the Building Regulation Office shall give its reasons in writing and shall before taking a final decision, give any interested parties the opportunity to make written submissions within such reasonable time as it may establish:</p> <p style="padding-left: 40px;">Provided further that any such exemption shall be notified to the Commission.</p>
<p>Power to establish minimum requirements.</p>	<p>4. (1) The Building Regulation Board may take the necessary measures to establish minimum requirements for in-building physical infrastructure.</p> <p>(2) When setting requirements, the Building Regulation Board may differentiate between new and existing buildings and between different categories of buildings.</p> <p>(3) Where the guidance contained in any technical guidance document as may be issued in connection with these Regulations relates only to the particular requirements of these Regulations, any construction works and the installation of any permanent mechanical or electrical services may be required to also comply with the requirements of any other laws that are operative for the control of construction works and installations.</p>

ANNEX III: PROPOSED CHANGES TO EXISTING PROVISIONS OF CHAPTER 399

NOTE: This draft Act is colour-coded for ease of reference:

BLUE TEXT: provisions implementing Directive 61/2014/EU

RED TEXT: proposed changes to the existing provisions of Cap. 399

BROWN TEXT: text does not bear comparison to the original text of Cap.399

GREEN TEXT: any other changes, including changes indirectly emanating from Directive 61/2014/EU

	SCHEDULE
First Column	Amendment of Laws
Enactment	Second Column
Enactment	Extent of Amendments
Electronic Communications (Regulation) Act Cap. 399 Imposition of sharing of wiring obligations	<p>1. Article 12 thereof shall be substituted with the following:</p> <p style="padding-left: 40px;">“12. (1) The provisions of article 2 of the Utilities and Services (Regulation of Certain Works) Act shall unless provided otherwise apply with regard to the provisions of this article.</p> <p style="padding-left: 40px;">(2) The Authority may as necessary, impose obligations in relation to the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on an undertaking providing electronic communications networks which has the right to install facilities on, over or under public or private property and, or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable:</p> <p style="padding-left: 40px;">Provided that such sharing or co-ordination arrangements shall include rules for apportioning the costs of facility or</p>

property sharing adjusted for risk where appropriate.

(3) Subject to the obligation of a holder of a right to use the access point and the in-building physical infrastructure, to meet all reasonable requests for access from undertakings under fair and non-discriminatory terms and conditions, including price, where appropriate, an undertaking has the right:

(a) to roll out its network at its own costs up to the access point; and

(b) to access any existing in-building physical infrastructure with a view to deploying a high-speed electronic communications network if duplication is technically impossible or economically inefficient:

Provided that if access referred to in paragraphs (a) or (b) is not achieved within two months from the date of receipt of a written request for access, then an aggrieved party may refer the dispute to the Dispute Resolution Board in order to assess compliance with the requirements provided with in the aforesaid paragraphs:

Provided further that any such reference by an aggrieved party to the Board must be made within twenty days from the lapse of the two months period referred to in this sub-article.

(4) The Dispute Resolution Board shall in determining any dispute referred to it in accordance with this article, take full account of the principle of proportionality, issue a binding decision to resolve the dispute raised within the shortest possible time frame and in any case within two months from the date of the receipt of the complete request except in exceptional circumstances in accordance with article 32 of the Utilities and Services (Regulation of Certain Works) Act.

(5) The Authority may, after having consulted with the any other utility regulator or regulators as the case may be and with any other such other public sector body or bodies as it may consider necessary in the circumstances, provide for exemptions from the obligations provided for in sub-article (3) for buildings where access to an existing network that terminates at the location of the end-user and that is suitable for the provision of high-speed electronic communications services, is ensured on objective, transparent, proportionate and non-discriminatory terms and conditions.

	<p>(6) In the absence of available high-speed-ready in-building infrastructure, an undertaking may terminate its network at the premises of the subscriber subject to the agreement of the subscriber provided that it minimizes the impact on the private property of third parties.</p> <p>(7) The provisions of this article are without prejudice to the right to property of the owner of the access point or the in-building physical infrastructure, in cases where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties such as landowners and building owners.</p> <p>(8) A person suffering damages as a result of the exercise of the rights under this article shall be entitled to adequate financial compensation in accordance with applicable national legislation.”</p>
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