

Directive No. 2 of 2005

Directive of 2005 on the Modalities of Payment for Contributions to the Cost of Legal Intercept Obligations under the Electronic Communications (Regulation) Act.

The Malta Communications Authority, in accordance with its powers given under Article 4 of the Malta Communications Authority Act, has made the following Directive.

Part I

PURPOSE AND DEFINITIONS

1. The title of this directive is the Directive of 2005 on the Modalities of Payment for Contributions to the Cost of Legal Intercept Obligations under the Electronic Communications (Regulation) Act.

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2. The purpose of this Directive is to define a cost sharing mechanism for legal interception obligations, and establish the manner in which contributions are paid, as provided by Regulation 13 of the Electronic Communications Networks and Services (General) Regulations in furtherance of Article 34(1)(r) of the Electronic Communications (Regulation) Act:

Provided that the Authority shall in collecting any amounts in accordance with this Directive be deemed to be acting for and on behalf of the Security Service.

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3. In this Directive unless the context otherwise requires:

“the Act” means the Electronic Communications (Regulation) Act;

“the Authority” means the Malta Communications Authority;

“contributions” means any amounts due or paid to the Authority acting on behalf of the Security Service for the purpose of contributing to the cost of legal interception obligations;

“cost of legal interception obligations” means the costs for the design, supply, installation, implementation, commissioning, lease, use and maintenance of the

Unified Lawful Interception (hereinafter referred to as the ULI) System by the Security Service ;

“legal interception fund” means the fund established for the sole purpose of sharing the cost of legal interception obligations;

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“the Regulations” means the Electronic Communications Networks and Services (General) Regulations, 2004

“relevant services” means all publicly available electronic communications services, with the exclusion of television and radio distribution services;

“relevant year” means any year during which contributions are to be paid to the legal interception fund;

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“the Security Service” means the Security Service (hereinafter referred to as the ‘MSS’) established under the Security Service Act;

“total gross revenues” means the total gross turnover generated by an undertaking, less unregulated activities, exclusively from the provision of relevant services; and

“undertaking” means a person providing or authorised to provide electronic communications networks and, or services or associated facilities.

Part II

FUND ESTABLISHED FOR THE SHARING OF THE COST OF LEGAL INTERCEPT OBLIGATIONS

4. A legal interception fund for the sole purpose of sharing the cost of legal interception obligations shall be established and administered by the Authority.

5. The fund shall be administered on an annual basis and undertakings shall be required to contribute to this fund in proportion to their total gross revenues from relevant services for any relevant year. The Authority shall keep under review the sharing mechanism in order to ensure that contributions to the fund respect the principles of non-discrimination and proportionality.

6. The Authority shall in advance determine the respective contribution to the fund of every undertaking on the basis of the projected cost of interception obligations. For this purpose the Authority shall issue a statement to every undertaking specifying the contributions due.

7. Contributions to the fund by undertakings shall be payable to the Authority, on an annual basis, by not later than 30 days from the date on which the Authority issues the statement referred to in article 6 of this Directive.

Part III

PROVISIONAL PAYMENTS, VERIFICATION AND ADJUSTMENTS

Statement of projected revenues

8. For the purpose of calculating contributions to the legal interception fund on the basis of total gross revenue, each undertaking shall submit to the Authority, by not later than the 30th November of the previous year, a statement of projected revenues for the relevant year:

Provided that the first statement of projected revenues for the relevant year or part thereof, to be submitted by an undertaking following notification of its intention to provide services under the general authorisation regime, shall be submitted by not later than the first quarter in which such notification is made:

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

Reconciliation with actual revenues

9. The Authority shall reconcile contributions paid on the basis of projected revenues, against the contributions, which should have been paid, on the basis of actual revenues. For this purpose, each undertaking shall submit to the Authority, within a maximum period of 12 months after the 31st December of the relevant year, an audited statement of actual quarterly revenues as represented in the financial statements of the undertaking concerned.

Undercharging and overcharging

10.1. Where the amount paid by an undertaking is less than the amount payable by reference to the statement of actual revenues, the undertaking concerned shall, within such time as may be specified in writing by the Authority, pay the balance of the contributions so payable.

10.2. Where the amount paid by an undertaking is more than the amount payable by reference to the actual statement of turnover, the Authority shall, as soon as may be after the receipt of all the audited statements referred to in article 9 of this Directive refund to the undertaking concerned the excess amount so paid by way of a credit note against contributions payable in the following year.

Part IV

RECONCILIATION OF CONTRIBUTIONS

Overview of contributions and legal interception costs

11.1. The Authority in accordance with the requirements under Regulation 13 (3) of the Regulations in adherence to the principles of transparency, non-discrimination and proportionality, shall publish an overview of contributions and legal interception costs by not later than six months following the 31st December of each relevant year:

Provided that the first such overview shall cover the period 1 January 2006 to 31 December 2006;

Provided further that the Authority shall also publish an overview of projected contributions and legal interception costs by not later than 30 days from the date on which the Authority first issues the statements referred to in article 6 of this Directive.

Repayments or compensations

12.1. The Authority shall make appropriate reimbursement in the case of overcharging, or require additional contributions in the case of undercharging, of an undertaking on which a contribution is imposed in the light of any difference between the total sum of contributions collected and the legal interception costs incurred:

Provided that the Authority shall carry out this exercise by not later than six months after it has received all the audited financial statements of the undertakings required to pay contributions.

12.2. Any surplus of income from contributions over the legal interception costs in a particular relevant year shall:

12.2.1. where appropriate, be retained in the legal interception fund to be offset against contributions due for the subsequent year, or

12.2.2. within 30 days after the publication of the annual overview, be refunded proportionately to the undertakings on whom the contributions were imposed.