



International Connectivity for Telecommunications Consultation 2024

Submission by the Maritime Area Regulatory Authority (MARA) in response to consultation

Introduction

The enactment of the Maritime Area Planning Act 2021 (MAPA 2021) was part of an unprecedented extensive marine management reform programme in Ireland. The Act regulates the maritime area and achieves this regulation by various means, including the National Marine Planning Framework (NMPF). The NMPF contains a vision, objectives and planning policies for all marine-based human activities. It outlines how those activities will interact with each other in an increasingly pressured ocean space. It is the key decision-making tool for Government departments, State agencies, regulatory authorities and policy makers for decisions on marine activities up to 2040.

The establishment of MARA in July 2023 was another means of regulation contained in the MAPA 2021. MARA facilitates a streamlined consenting process for projects in the maritime area and a route for projects to the planning system by assessing applications for Maritime Area Consents (MACs) which are the right to occupy the seabed. A MAC is required before a planning application can be made. It also regulates activity in the maritime area by issuing maritime usage licences and has an important statutory role in compliance and enforcement. In all aspects of its work, MARA must have due regard to the NMPF.

MARA notes that this consultation is primarily aimed at telecommunications service providers and large volume users of international links (including content providers and data centre owners). Therefore, MARA does not propose to address the specific questions raised in Part 5 of the consultation document. However, MARA believes it is necessary to offer views on some of the points raised in the document that directly impact on its functions under the MAPA 2021.

MARA's role in the regulation of subsea telecommunications cables

1. Any project promoter wishing to carry out site investigations in the maritime area, in advance of project development, is required to obtain a Maritime Usage Licence (MUL) from MARA. MARA is obliged to determine a MUL within 30 days of an applicant complying with all requirements under the Act. In addition, the MAPA 2021 currently provides that subsea cables traversing Ireland's EEZ are subject to a marine usage licence.
2. In accordance with Section 75 of the MAPA 2021 a development consent cannot be applied for from a consenting authority unless a Maritime Area Consent (MAC) has been obtained from MARA. MARA is obliged, to the extent that it is practicable, to determine a MAC within 90 days of an applicant complying with all requirements under the Act. If an application is positively determined by MARA, the holder of the MAC must pay an annual levy to MARA. Details of these levies are available at <https://www.maritimeregulator.ie/mac-levy-framework/>
3. If an applicant successfully obtains a MAC from MARA and subsequent to that a development consent from a consenting authority, MARA is obliged to monitor and enforce any conditions placed on the project in the development consent.

Acknowledging the new regulatory framework in place, MARA is open to engaging with all stakeholders to set out its processes/timelines etc. in relation to subsea telecommunications cables development in the maritime area.

MARA's comments on the public consultation

MARA fully recognises the national and EU strategic importance of international connectivity for telecommunications and notes the longer term issues identified, in particular, in PWC's Gap Analysis Report. MARA is more than willing to work with the Department and stakeholders to address these issues moving forward.

However, MARA would like to make the following observations –

Levies on Cables

MARA, as the regulator of Ireland's maritime area, has an important role to play in the protection of a significant state asset and must do so having regard to the NMPF. MARA is pleased to note that the consultation recognises the importance of ensuring a return to the State when enabling project promoters to occupy the maritime area.

MARA notes that the Market Failure and Barriers to Investment Report suggests (on foot of a public consultation in 2021) that MARA's levy framework may negatively impact on investment in subsea cables in Ireland. It also highlights that in order to improve Ireland's relative attractiveness for investment, it must continue to streamline its regulatory process, seek to increase the share of renewable energy in the energy mix, so that further investment can be powered by renewable sources, and ensure that costs are competitive – including levy framework costs.

MARA suggests, however, that there is a disproportionate emphasis placed on the levy framework in terms of barriers to investment. The extent to which the levy framework is a barrier to investment is not sufficiently scoped out in the papers supporting the public consultation paper, compared to other potential barriers such as potential delay in and uncertainty surrounding consenting and planning authorisations.

In the interest of completeness, MARA is of the opinion the consultation would benefit from a wider look at supports to industry, including for example a review of the tax regime or other possible direct State interventions.

As noted in the consultation paper, the design of a framework for the setting of levies for MACs, is a competence of the Board of MARA under section 47 of the MAPA 2021. In December 2023, the Board of MARA, having obtained the consent of the Minister for Public Expenditure and Reform (MPER), established the levy framework.

In obtaining the consent of MPER, MARA undertook to carry out a review of its levy framework in 2025.

MARA notes the specific issues identified in the public consultation in relation to a difference in levy costs payable for cables coming ashore on the east and west of the country, given the topography of the Irish coast line.

MARA will consult with the Department as part of our review next year and will be happy to consider any recommendations arising from its public consultation, in particular in relation to this inconsistency, in the context of this wider review.

Planning and Licencing

MARA notes that DECC propose no amendments to the legislative framework. While MARA has processed some MUL applications for telecom cables (for associated site investigations), a full end to end application (site investigation licence, MAC, development consent) has not been completed. MARA is, therefore, of the view that new regulatory approach has not yet been fully tested.

Consistent approach to applications

The Department's recommendation that a designated maritime area plan (DMAP) should be developed for the subsea telecommunications sector is supported by MARA. A plan-led approach with specific cable corridors and landing zones would ensure that the optimal locations are selected from an environmental and sustainable development perspective.

MARA looks forward to engaging further with the Department in relation to this proposed DMAP.

MARA suggests that the following would need to be considered in the development of this DMAP –

- The security of our subsea cables has to be carefully considered, in particular, where it is envisaged that uptake in the DMAP area would be dense.

- MARA is of the view that any DMAP should be linked to terrestrial land use plans to ensure there is a coherent approach to planning, taking account of these land-sea interactions.
- In accordance with Section 44 of the MAPA 2021, MARA is obliged to have regard to the policies of the Government or any Minister of the Government to the extent that those policies may affect or relate to the functions of MARA. MARA notes that Government policy may require it to prioritise MUL and MAC applications from subsea cable project developers. While MARA has no objection to this, in principle, MARA is currently operating under a Government policy of prioritising applications from another strategic sector. It will not be possible for MARA to prioritise every sector and, therefore, requests the Department to ensure it aligns its strategic priorities.

Build fibre on future international energy interconnector projects

MARA notes the Department's proposal in relation to international energy interconnector projects to include a requirement to build subsea telecommunications fibre cables at the same time. MARA strongly welcomes this proposal as it represents an efficient use of the maritime area in that it promotes co-usage of our valuable resource, which in turn is consistent with the NMPF.

Role of the State

If the State perceives a market failure in this critical infrastructure, MARA, as mentioned above, believes that the State must consider all intervention strategies (including direct State supports) in order to improve viability.

Ends.