

TELECOMMUNICATIONS LAWS OF THE WORLD

Portugal



Downloaded: 29 April 2024

PORTUGAL



Last modified 6 October 2022

OVERVIEW OF LEGAL LANDSCAPE

To create effective competition in the provision of telecommunications networks and services, to ensure a national efficient infrastructure and to protect the citizen rights and interests, the telecommunications market in Portugal is subject to sovereign regulation mechanisms.

Nowadays, companies are free to provide electronic communications networks and services, only subject to a general authorisation. This regime determines that the execution of activities in the telecommunications sector does not depend on any prior authorization by the competent regulatory authority.

Both national and European legislation aims at opening the telecommunications markets and creating equal competition conditions. The Portuguese Electronic Communications Law assigned the National Communications Authority (ANACOM) as the national regulatory authority and provides it with the functions of regulation, supervision, monitoring and sanctioning.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The fundamental law for the electronic communications sector is the Electronic Communications Law, approved by Law No. 5 /2004 of 10 February. This law transposes into national legislation Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22 /EC, of the European Parliament and of the Council of 7 March, and Directive 2002/77/EC of the Council of 16 September.

Besides the Electronic Communications Law, several aspects of this sector can be found in other regulations:

- Decree-Law No. 123/2009 of 21 May, governs the construction of infrastructure suitable for the accommodation of electronic communications networks, the deployment of electronic communications networks and the construction of infrastructure for telecommunications in housing developments, urban settlements and concentrations of buildings.
- The regime applicable to radio communications networks and stations, established in Decree-Law No. 151-A/2000 of 20 July.
- The regime for essential public services and the means of user protection, regulated under Law No. 23/96 of 26 July.
- The regimes governing the placing on the market, setting into service and use of radio equipment, approved by Decree-Law No. 57/2017 of 9 June.
- Law No. 99/2009 of 4 November establishes the legal framework applicable to administrative offences committed within the communications sector, including infringement of legal and regulatory provisions.

REGULATORY BODIES OR AUTHORITIES

ANACOM is the Portuguese regulatory authority for postal communications and electronic communications.

Address: Av. José Malhoa, 12, 1099-017 Lisbon, Portugal

Telephone: +351 217 211 000

Website: www.anacom.pt

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The Portuguese Electronic Communications Law establishes the legal regime applicable to electronic communications networks and services and to associated services. Therefore, providers of electronic communications networks and services are subject to this regulation.

An **"electronic communications network"** is defined in this law as transmission systems and, where applicable, the switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

An **"electronic communications service"** is defined as a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting.

"Associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service, including conditional access systems and electronic programme guides.

This being said, any activities of providing electronic communications networks and services, except from the ones referred in point a) and b) of No. 1 of article 2 of the present law, are subject to this regulation.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

In Portugal, the provision of telecommunications networks and services is only subject to a general authorisation regime. Therefore, the provision of activities in this sector does not depend on any prior decision or act of ANACOM but is subject to a mere declaration of initiation of activity signed by the provider, after which the company who wishes to initiate offers in Portugal may commence its activities.

However, the use of spectrum frequencies and number allocation depends on the award of individual rights of use that are conducted by ANACOM.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

According to the Portuguese telecommunications regulation, there is no requirement for a provider of telecommunications services to be domiciled in Portugal for the provision of these services.

Moreover, there are no restrictions on foreign ownership or investment in the electronic communications sector in Portugal, except for the limits to cross-ownership (which are not exclusive to foreign investors) that apply to television and radio activities.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every public telecommunications network operator is required, upon request, to make an interconnection offer to other public telecommunications network operators to secure user communication and the provision and interoperability of electronic communications services throughout the European Union (cf. article 64, No. 2 of Portuguese Electronic Communications Law).

According to article 77 of the referred regulation, ANACOM has the power to impose obligations on any telecommunications network operators that control access to end-users (regardless of whether it holds a significant market power) to interconnect to their networks with those of other public telecommunications network operators.

Additionally, ANACOM has the power to require public telecommunications network operators with significant market power to create the necessary prerequisites for the interoperability of end-to-end communication, including the provision of facilities for intelligent network services and roaming (enabling the use of other operators' mobile networks outside the coverage area of the requesting mobile operator, for the requesting operator's end-users) (cf. article 72, No. 2, point e).

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Portuguese Electronic Communications Law has adopted several consumer protection rules. These rules not only refer to the term "consumers" but also to "users", "end-users" and "subscribers".

According to the present law:

"Consumer" means any natural person who uses or requests a publicly available electronic communications service for non-professional purposes (cf. article 3, point j)

"User" is defined as a legal entity or natural person using or requesting a publicly available electronic communications service. (cf. article 3, point nn)

"End-user" means a user not providing public communications networks or publicly available electronic communications services. (cf. article 3, point oo)

"Subscriber" is defined as any natural person or legal person who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services. (cf. article 3, point e).

Specific obligations regarding consumers protection include:

- The obligation to specify in contracts with consumers and end-users, among other things/conditions, the following:
 - Services provided
 - Details of prices
 - The duration of the contract and the conditions whereby the contract or services may be renewed, suspended or terminated
 - Explicit indication of the subscriber's willingness in respect of the inclusion or not of their respective personal information in a public directory
 - The type of action that might be taken by the provider in reaction to network security or integrity incidents.
- The availability of number portability when required by the subscriber of the new service provider
- Regarding contract duration, the binding period in contracts for the provision of electronic communications services with consumers may not exceed 24 months
- The obligation to take into account the interests of disabled users

REGULATORY TAXES AND FEES

Concerning the applicable fees for the authorisation and licensing process, administrative rule No. 1473-B/2008 of 17 December approves the value of each payable fee.

Fees are due in respect of:

- The issuance by ANACOM of statements supporting rights
- The exercise/execution of the activity by a provider of telecommunications networks and services (regulatory fee)
- The assignment of rights of use of frequencies and numbers
- The use of frequencies and numbers

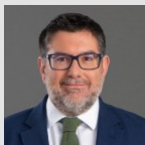
KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The Portuguese Electronic Communications Law provides for numerous measures which are at the national regulatory authority (ANACOM) disposal to enforce the applicable telecommunications regulations. These measures include formal information requests, investigations, full or partial suspension or revocation of the respective usage rights and the prohibition of business operations.

Breaches of the present Law can also trigger penalties. The penalties range from fines between EUR 100 to EUR 20.000 and from EUR 200 to EUR 5.000.000 whether they respect natural or legal persons, respectively (cfr. article 113, No. 9, 10 and 11 of Electronic Communications Law).

In addition to these sanctions, in the cases referred to in the article 110 of the above-mentioned law, ANACOM may determine the application of a compulsory penalty payment under the terms of article 116 of the present law.

KEY CONTACTS



Daniel Reis

Partner

DLA Piper ABBC

T +351 91 1904476

daniel.reis@pt.dlapiper.com

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.