

NEW ELECTRONIC COMMUNICATIONS LAW

After an unusually long and bumpy consultation process and a significant delay on the transposition calendar of the directive that originated it, the new Electronic Communications Law was published.

The new Portuguese Electronic Communications Law ("**LCE**"), published on August 16, 2022, transposes [Directive \(EU\) 2018/1972](#), which informs the most recent recast of the sector's regulatory framework establishing the European Electronic Communications Code ("**EECC**").

In 2004, Portugal transposed the Review99's Directives (of 2002) into a single act thus creating a national version of an electronic communications code, the transposition of **EECC** should have been an easy task. Interestingly, as the transposition deadline was practically expired before the pandemic outbreak, the cause of this delay seems to be mostly attributable to the sector's upheavals, such as the 5G auction technology implementation, rather than to COVID-19 lockdowns.

Although it broadly follows its predecessor, the newly enacted **LCE** is an entirely new piece of legislation, and, as such, some relevant changes were introduced, not only to accommodate all the new features of **EECC**, but also to reflect the new regulatory policy priorities.

Most of the relevant new features focus on issues regarding consumers *vis-à-vis* operators' rights in general, privacy in electronic communications and a thorough overhaul of the sanctions' framework. We highlight some of them below.

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CONSUMER RIGHTS

Regarding consumer protection rules introduced by the new law:

- (1) **Retention period.** According to the new paragraph 3 of article 131, the availability of installments with shorter retention periods (12 or 6 months) is no longer mandatory, however, there is a new maximum limit of 24 months.
- (2) **Unavailability of service.** The law states that in case there are any reports of service unavailability lasting longer than 24 hours, the operator must credit the equivalent value. The return of this amount does not only apply when there are interruptions of more than 24 consecutive hours, but also to situations where the failures added together exceed this time, per billing period. However, for the consumer to be able to terminate the contract free of charge, a 15-day period of persistence of the problem is required (after the report).
- (3) **Situations in which no early termination costs are charged.** The new **LCE** defined a few situations where early termination costs cannot be charged, such as unemployment

(for reasons not attributable to the consumer), incapacity to work for more than 60 days with a loss of income or a change of address to a place where the operator cannot provide an equivalent service.

ELECTRONIC COMMUNICATIONS PRIVACY

- (1) **Amendment to the Law on Privacy in Electronic Communications.** Regarding the Law on Privacy in Electronic Communications (Law no. 41/2004, of 18 August), Articles 7 and 10 are amended. Essentially, the amendments concern the increase of the number of organizations to which personal data regarding the location of emergency communications may be shared with, now covering not only the organizations legally entitled to receive such communications, but also those entitled to process them.
- (2) **Itemized billing.** Article 122, paragraph 5, of the new **LCE** provides that itemized bills do not have to identify free of charge calls, including calls to helplines.
- (3) **Procurement avoidance.** It is not clear in Article 126 whether, in the case of services provided to a company, the company that contracts the electronic communications services will be included in the database or if it will be the employees as actual users of the services.

SANCTIONING FRAMEWORK

Article 176 and partially Article 164 of **LCE** outline a new and very broad sanctioning framework for electronic communications in Portugal.

SOME MORE DETAILS...

- (1) **"Electronic communications service".** The definition of "electronic communications service" was broadened and now includes a range of activities typically carried out by instant messaging applications, email, internet calls and personal messages through social media.
- (2) **General consent.** A notifying duty is now imposed where companies intending to offer public electronic communications networks and publicly available electronic communications services must inform the National Regulatory Authority ("**ARN**") about the start of their activity.

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