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ELECTRONIC COMMUNICATIONS LAW

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About us

MACEDO VITORINO WAS ESTABLISHED IN 1996, FOCUSING ITS ACTIVITY ON ADVISING DOMESTIC AND FOREIGN CLIENTS ACROSS KEY SECTORS, INCLUDING BANKING, TELECOMMUNICATIONS, ENERGY, REAL ESTATE, AND INFRASTRUCTURE.

Since the incorporation of the firm, we have been involved in several high-profile transactions across all of the firm's fields of practice, including banking and finance, capital markets, real estate, M&A, complex disputes, and corporate restructurings.

We have strong relationships with leading international firms across Europe, the United States, and Asia, enabling us to manage cross-border legal matters effectively. We are mentioned by The European Legal 500 in most of its practice areas, including Banking and Finance, Capital Markets, Project Finance, Corporate and M&A, Tax, Telecoms, and Litigation. Additionally, our firm is mentioned by IFLR 1000 in Project Finance, Corporate Finance, and Mergers and Acquisitions and by Chambers and Partners in Banking and Finance, Corporate and M&A, TMT, Dispute Resolution, and Restructuring and Insolvency.

The multidisciplinary and integrated character of our corporate and commercial group allows us to efficiently solve the legal issues of our clients, in particular:

- Commercial contracts, distribution agreements and franchising
- Competition and European law
- Copyright, intellectual property, IT, patents, and trademarks
- Corporate and acquisition finance
- Dispute resolution, litigation, mediation, and arbitration
- Employment
- Foreign investment, mergers & acquisitions, and privatisations
- Real estate acquisition and disposal
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Contents

ABOUT US	2
CONTENTS	1
FOREWORD	3
1. ANACOM AND OTHER COMPETENT AUTHORITIES	5
2. GENERAL AUTHORISATION, FREQUENCIES, NUMBERS AND SECURITY	7
2.1. GENERAL AUTHORISATION FRAMEWORK	7
2.2. GENERAL AND SPECIFIC CONDITIONS	7
2.3. OPERATOR'S RIGHTS	8
2.4. THE RADIO SPECTRUM	9
2.5. NUMBERING RESOURCES	11
2.6. SECURITY AND EMERGENCY	12
3. MARKET ANALYSIS AND REGULATORY CONTROLS	13
3.1. GENERAL PROVISIONS	13
3.2. MARKET ANALYSIS	13
3.3. OBLIGATIONS ON OPERATORS WITH SIGNIFICANT MARKET POWER	13
3.4. ACCESS AND INTERCONNECTION	15
3.5. REGULATORY CONTROLS IN RETAIL MARKETS	16
4. USERS' RIGHTS, UNIVERSAL SERVICE AND ADDITIONAL MANDATORY SERVICES	17
4.1. END-USERS' RIGHTS	17
4.2. AGREEMENT INFORMATION REQUIREMENTS	18
4.3. CONTROL MECHANISMS FOR CONTRACTING AND INVOICING	19
4.4. DURATION OF THE AGREEMENT	19
4.5. TERMINATION OF THE AGREEMENT	20
4.6. UNIVERSAL SERVICE	21
4.7. ADDITIONAL MANDATORY SERVICES	22
5. TRANSPORT OBLIGATIONS AND EQUIPMENT	23
6. FEES SUPERVISION AND CONTROL	24
6.1. RATES	24
6.2. SUPERVISION AND CONTROL	24

7. OPEN INTERNET PRINCIPLE..... 27

FOREWORD

With a considerable delay, in August 2022, Law 16/2022, of 16 August 2022 ("**Electronic Communications Law**" - "**ECL**") implemented the European Electronic Communications Code¹ ("**European Code**" - "**EECC**").

Despite the absence of changes in critical elements, the ECL brings in some crucial innovations regarding (i) consumer rights, (ii) sanctioning framework, and (iii) privacy in electronic communications.

Compared with the 2005 electronic communications law (Law 5/2004, of 10 February 2004), the ECL has a wider scope reflecting a more comprehensive definition of "*electronic communications service*". According to the new definition, electronic communication services now encompass individually addressed signal services – delivered through electronic networks – and services independent of numbers, such as internet access, *machine-to-machine* communications, and *over-the-top* services ("**OTT**").

The rules entered into force 90 days after the ECL enactment (14 November 2022), with the following exceptions:

- Rules covering the charges required in the event of early termination of the agreement at the consumer's request (refer to articles 136/4 and 136/5 of the ECL) became effective 60 days following its publication on 13 January 2023;
- Rules on emergency communications and a single European emergency number which shall take effect from the moment the access to an emergency service is opened to the public by the competent national authorities; and
- Rules on network and service security, including additional requirements and assistance and cooperation arrangements with the National Computer Security Incident Response Team (*Equipa de Resposta a Incidentes de Segurança Informática Nacional*), which came into force immediately with the publication of the ECL.

¹ [Directive \(EU\) 2018/1972 of the European Parliament and of the Council of 11 December 2018.](#)

It is worth mentioning that, in 2004, the Portuguese legislators had already unified five EU Directives² into a single piece of legislation, creating a structurally cohesive framework that was broadly maintained until 2022. Even so, by mid-2021, in addition to the 2004 Electronic Communications Law, the Portuguese communications' regulatory framework consisted also of 46 other diplomas: 23 laws and 16 administrative regulations³.

Despite major changes, especially for consumers and the sanctioning framework, the ECL has kept the same structure as its preceding legislation, affecting the operator's financial and business stability.

² [Directive 98/84/CE](#); [Directive 2002/77/CE](#); [Directive \(UE\) 2018/1972](#); [Directive 2002/58/CE](#) ; [Directive 2011/83/UE](#)

³ Cf. João Macedo Vitorino, Pedro Ramalho de Almeida et al., *Sweet&Maxwell Global Telecommunications R.76*, Chapter 28, PO-08, page 5064, London, June 2021.

I. ANACOM AND OTHER COMPETENT AUTHORITIES

The Portuguese Communications Authority (*Autoridade Nacional de Comunicações* - "ANACOM") serves as Portugal's National Regulatory Authority (*Autoridade Reguladora Nacional* - "NRA") for the communications sector.

The term "communications" – which defines ANACOM's scope of authority – includes electronic and postal communications. The ECL clarified ANACOM's jurisdiction in previously undefined areas and expanded its role to include new market sectors.

For instance, the ECL extends ANACOM's regulatory authority to Over-The-Top (OTT⁴) services. Although these services operate exclusively at the application layer of data transmission networks⁵, the ECL categorises OTT as network services for legal and market analysis purposes, particularly regarding end-user rights.

The ECL assigns ANACOM a comprehensive set of regulatory, supervisory, control, and enforcement duties for the communications sector. Specifically, ANACOM is responsible for the following:

- Promoting competition in the provision of electronic communications networks and services;

⁴ OTT or "over-the-top" refers to any service or application that delivers audio, video, or other media over the internet without requiring a traditional cable or satellite subscription (e.g. streaming platforms such as Netflix, Hulu, and Amazon Prime Video and social media apps like Facebook and Instagram).

⁵ As a historical curiosity, it is interesting to note that although the definitions of telecommunications services under the General Telecommunications Regime (then regulated by Law 88/89 of 09/11/1989 and Decree-Law 290-B/99 of 06/30/1999) were quite similar to today's definitions, it wasn't until the second half of the 2000s that communications over data networks, such as VoIP (Voice over Internet Protocol), began to be recognised as real communication services. The first consultation on this issue was published in 2006, following the enactment of LCE2004. Services like Skype (now integrated into Microsoft Teams), and later WhatsApp and iMessage, were previously seen as mere functionalities rather than true communication services.

- Ensuring access to networks, infrastructures, facilities, and services;
- Protecting the rights and interests of consumers and other end-users; and
- Ensuring access to the universal electronic and postal communications service and enforcing universal service obligations.

Among other changes, the ECL grants ANACOM additional powers and duties, particularly in spectrum management. ANACOM is now authorised to promote the shared use of the radio spectrum, allowing multiple operators to access the same frequency bands through the allocation of rights of use for frequencies (in Portuguese, "*Direitos de Utilização de Frequências*" or "DUF").

Additionally, the ECL clarifies that regulations for competitive or comparative selection procedures for radio spectrum rights of use must be approved by the government ministerial department responsible for the communications sector.

The ECL is aligned with the European Electronic Communications Code by recognising the role of "*other competent authorities*" in the communications sector. Entities such as the National Authority for Emergency and Civil Protection (*Autoridade Nacional de Emergência e Proteção Civil* – "ANEPC") are legally granted specific powers, particularly concerning end-user rights.

To facilitate this, the ECL requires ANACOM to collaborate with "*other relevant entities*" by organising public consultations and sharing information on matters of joint interest, particularly those related to emergency communications.

2. GENERAL AUTHORISATION, FREQUENCIES, NUMBERS AND SECURITY

2.1. GENERAL AUTHORISATION FRAMEWORK

The provision of electronic communications networks and services is unrestricted, allowing companies to offer such services without prior authorisation from the regulator, except when obtaining rights of use for elements such as frequency bands (DUFs) and numbering rights.

Companies intending to provide public electronic communication networks and publicly available electronic communication services must notify ANACOM before starting operations. This notification must include:

- A statement of the applicant's intent to begin operations;
- The applicant's identification details, along with the website associated with the provision of public electronic communication networks and services;
- Contact information for communications and notices, including a mandatory email address;
- A brief overview of the planned network and services; and
- The expected service launch date.

It is worth mentioning that companies not subject to the general authorisation regime under the ECL are not required to fulfil this prior notification to ANACOM requirement before launching their operations. Similarly, this requirement does not apply to providers of electronic communications services not intended for public access.

ANACOM may also, through specific regulations, exempt certain companies offering specific public electronic communication networks and publicly available services from this requirement.

2.2. GENERAL AND SPECIFIC CONDITIONS

Companies providing electronic communications networks and services remain subject to several general conditions established under the previous law. These include:

- Access obligations;

- Obligations related to the processing of personal data and the protection of privacy within the electronic communications sector;
- Obligations to install and provide lawful interception systems to national authorities, including decryption capabilities when such facilities are offered;
- Conditions of use of the radio spectrum for electronic communications services; and
- Conditions of use to ensure communications between emergency services, competent authorities, civil protection agents and the public.

Entities not subject to the general authorisation regime are not subject to these general conditions.

In addition, companies providing electronic communications networks and services may also be subject to specific obligations, particularly those related to access and interconnection, retail market regulations, and the provision of universal service.

Finally, it is important to note that providers of independent interpersonal communication services may, in certain cases, also face access and interconnection obligations due to changes introduced by the ECL.

2.3. OPERATOR'S RIGHTS

The ECL grants companies providing electronic communications networks or services -whether intended for public or private use - the right to request the establishment of rights of way and to utilise the radio frequency spectrum for deploying their networks and services.

Companies offering public networks or services have additional rights, including the right to apply for universal service provider status and expand their coverage nationwide.

These rights may be amended through legislative, regulatory or administrative measures, provided such changes are objectively justified, proportioned and approved by the rights holder. Amendments are subject to a public consultation process that allows stakeholders to provide input unless the changes are minor or do not affect the fundamental nature of the rights of use.

The holders of DUF and numbering resources are granted a general guarantee of non-restriction and irrevocability of these rights until their expiration. However, the law outlines specific criteria under which these rights may be restricted or revoked in advance by the NRA, including:

- Voluntary consent by the rights holder;

- Justified reasons to ensure the effective and efficient use of numbering resources or radium spectrum; and the implementation of technical measures under Article 4 of the Radium Spectrum Decision.⁶

Restricting or revoking rights without the holder's consent or in unjustified cases must follow a legal procedure that upholds the principles of proportionality and non-discrimination.

In cases where rights are restricted or revoked, holders are entitled to compensation for any exceptional and abnormal losses or damages suffered, as determined by ANACOM following the rules on extracontractual liability of the State and other public entities.

Summarising, the ECL does not introduce significant innovations in this area but clarifies that these rules extend to Over-The-Top (OTT) services and companies that wish to offer electronic communications services not intended for public use.

2.4. THE RADIO SPECTRUM

The radio frequency spectrum, which enables the transmission of electromagnetic waves with frequencies between 3kHz and 3000GHz, is a vital public resource with significant economic and social value for the country. This importance is evident in the amounts paid for rights to use it and in the intense public debate surrounding spectrum-related issues⁷.

ANACOM is responsible for managing the spectrum and must promote its efficient use according to technological and service neutrality principles. The first of these principles states that any technology may be used in the frequency bands allocated to electronic communications services. In contrast, service neutrality allows any type of electronic communications services may be offered through the available frequency bands.

The ECL has not introduced significant changes to ANACOM's role. ANACOM retains most of its existing powers, including the power to assign, modify, renew rights of use, and to authorise the transfer or lease of such rights.

⁶ [Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radium spectrum policy in the European Community.](#)

⁷ On this topic, see, by way of example, the 2017 Study on Extending the Offer of Program Services on Digital Terrestrial Television (DTT), which can be consulted directly on the website of the Portuguese Parliament [through this link.](#)

However, in response to the challenges faced during the 5G DUF auction debacle, the ECL introduced two seemingly conflicting changes regarding future frequency allocation procedures. ANACOM has also been granted new powers for the protection of competitive usage of frequencies. On the other hand, the authority to decide on frequency allocation procedures has been transferred to the Government, which must now directly approve them.

The ECL reiterates ANACOM's responsibilities for granting rights of use for frequencies of electronic communications networks or services. These rights are always limited in time. For example, rights of use for the spectrum of wireless broadband electronic communications services are granted for 15 years, with the possibility of renewal.

As under the previous regime, ANACOM is also responsible for defining the conditions associated with the rights of use of the spectrum. If breached, the regulator can revoke the rights of use or impose other measures. These conditions must be proportional, transparent, and non-discriminatory, including setting maximum periods of rights of use.

The ECL introduces an innovative provision for the shared use of the radio spectrum, expanding its potential applications.

The renewal of rights of use is possible, but the renewal rules have been significantly changed under the ECL:

- Under the previous law, the renewal of rights of use for the radio frequency spectrum was solely dependent on the initiative of the holder; and
- Under the ECL, ANACOM may proactively assess the need to renew the radio frequency spectrum.

Holders of rights of use for the radio frequency spectrum may also apply for renewal. Still, applications must be submitted between 18 months and five years before the rights expire, compared to a minimum of one year's notice under the previous law. In any case, the regulator must respond to renewal requests within six consecutive months from the receipt date.

In the case of rights of use, whose number is limited, public consultations must be held to allow interested parties to provide input on renewal decisions. Since rights of use are licensed to operators, they are required to pay periodic fees, which, except in exceptional cases, are mainly intended to cover the costs of radio supervision.

Finally, it is worth mentioning that the National Frequency Allocation Framework (*Quadro Nacional de Atribuição de Frequências* - "**QNAF**", which may be accessed through this [link](#)) serves as the technical management instrument used for the radio spectrum, which defines the conditions of use according to its purpose.

2.4.1. TRANSFER AND LEASE OF RIGHTS OF USE

The ECL allows the transfer or leasing of rights of use for the radio spectrum.

As a rule, if the rights holder wishes to transfer or lease them, it can do so through a request to the regulator, which must approve or deny it within 45 business days.

However, in some cases, the transfer or leasing of rights of use is not permitted. These cases include rights allocated free of charge, the provision of radio broadcasting services and the distribution of television and radio broadcasting services as part of specific procedures to achieve public interest objectives.

2.4.2. COMPETITION

Under the ECL, ANACOM, the Portuguese NRA, is required to promote effective competition within the European Union's internal market when allocating, modifying, or renewing frequency usage rights, striving to minimise potential distortions to competition. In this regard, ANACOM, as the Portuguese NRA, can implement or recommend measures to other competent authorities addressing competition distortions. These measures may include, among others:

- Limiting the number of spectrum bands for which usage rights are granted or imposing conditions on these rights;
- Reserving portions of a spectrum band or group of bands for allocation to new market entrants; and
- Denying new rights of use or prohibiting new spectrum uses in specific bands and imposing conditions to their allocation, transfer, or lease to prevent competitive imbalances.

When adopting such measures, the regulator should base its decisions on an objective and forward-looking assessment of market competition conditions and the necessity of the proposed actions.

2.5. NUMBERING RESOURCES

The ECL designates ANACOM as the entity responsible for managing numbering resources in Portugal.

"Numbering resources", defined as the structured set of codes used by electronic communication networks to route signals, are part of the National Numbering Plan (*Plano Nacional de Numeração* – "**PNN**", [accessible through this link](#)), or an international numbering

plan⁸. ANACOM has the power to administer and allocate these numbers, which can be used to identify networks, network elements, end-users, services or applications that utilise these services and networks.

The ECL states that ANACOM is tasked with ensuring the availability of numbering resources for the operation of public electronic communication networks and the provision of publicly accessible electronic communication services.

Operators must submit a detailed and justified request to ANACOM to obtain the right to use these resources. ANACOM uses the National Numbering Plan as a technical tool for managing the allocation of these numbers, which includes specific criteria for each range of numbers.

2.6. SECURITY AND EMERGENCY

The ECL establishes general responsibilities for coordinating electronic communication networks and services during crises, wars, major accidents or disasters, and threats to internal security but also emphasises two specific regulations:

- First, providers of communication services using numbers are required to issue free public warnings in the event of imminent or ongoing emergencies, accidents, or disasters; and
- Second, all end-users of communication services are entitled to free access to the European emergency number 112, as well as any other national emergency numbers designated by ANACOM and listed in the National Numbering Plan, for making emergency calls.

⁸ The codes corresponding to the international numbering plans for electronic communications networks are assigned and managed within the International Telecommunications Union ("**ITU-T**") which, since 1865, has been the organisation responsible for defining the critical standards for the interoperability of electronic communications infrastructures ("**ICT**"), whether for voice, video or data transmission systems at a global level. In the words of the **ITU** itself, in short, it is about ensuring that "all ICT networks and equipment in all countries speak the same language".

3. MARKET ANALYSIS AND REGULATORY CONTROLS

3.1. GENERAL PROVISIONS

According to the ECL, market analysis and the imposition of specific obligations must comply with the principle of full justification, meaning that all decisions must be based on legal requirements and preceded by a public consultation process.

The definition of relevant products and *geographic markets* in the telecommunications sector and determining which companies have significant market power are ANACOM's responsibility.

3.2. MARKET ANALYSIS

The ECL entrusts ANACOM with the responsibility of defining and analysing the relevant product and service markets within the electronic communications sector, considering the level of infrastructure competition in those areas.

Following this analysis, ANACOM may impose specific obligations when:

- Market entry barriers exist;
- The market structure does not support effective competition; and
- Competition Law alone is insufficient to address specific deficiencies.

This analysis can be conducted for national and transnational telecommunication markets in collaboration with European authorities.

3.3. OBLIGATIONS ON OPERATORS WITH SIGNIFICANT MARKET POWER

The ECL retains the traditional definition of significant market power as a strong economic position that enables a company to operate independently of competitors, customers and end-users.

Like the previous legislation, the ECL allows the regulator to impose certain obligations on companies with significant market power. These obligations may include:

- Meeting reasonable requests for access to and use of infrastructure, such as civil engineering assets owned by the company;
- Implementing cost-oriented pricing and cost accounting systems for specific types of interconnections and access when there is no effective competition. However, the ECL introduces stricter conditions for imposing these obligations. ANACOM must now consider the benefits of predictable and stable wholesale prices that encourage efficient market entry and incentives for companies to invest in new and more advanced networks, particularly in areas of low population density; and
- The ECL aligns with the European Electronic Communications Code by emphasising the positive impact that the wholesale market can have on retail competition and reduce competitive risks.

As a result, wholesale companies are subject to a more favourable regulatory regime. Their obligations may be limited to non-discrimination, access to specific network elements and associated facilities, or fair, equitable, and reasonable pricing. However, this rule applies if the company meets strict cumulative criteria, which may make qualification challenging for some.

Companies with significant market power are now required to address specific obligations regarding infrastructure migration. For example, to mitigate the potential competitive risks associated with transitioning from old copper networks to next-generation networks, such companies must provide prior notification when planning to deactivate or replace their infrastructure, either fully or partially.

Access obligations are not limited to companies with significant market power. To improve economic efficiency, the regulator can impose access requirements on operators or owners of cabling and associated facilities within buildings or up to the first distribution point outside the building, regardless of market power status. This measure relies on symmetric regulation that applies uniformly to all operators⁹.

⁹ In contrast with asymmetric regulation that applies only to companies with significant market power.

3.4. ACCESS AND INTERCONNECTION

3.4.1. INTERCONNECTION

Companies providing electronic communication networks and services are free to negotiate and establish interconnection agreements independently.

ANACOM has the authority to impose access and interconnection obligations on companies, regardless of whether they possess significant market power, as long as they are objective, proportionate, transparent, and non-discriminatory. For instance, ANACOM may impose additional obligations on companies that control the access to end-users.

3.4.2. REGULATORY OBLIGATIONS

The ECL aligns closely with the EECC, preserving the regulatory obligations established under the previous legislation. However, the ECL introduces new and more stringent and complex regulatory obligations.

One example is the ECL's emphasis on symmetric regulatory obligations and access requirements, such as providing access to cabling up to the first distribution point, enabling access to civil engineering assets and imposing national roaming obligations. These new provisions aim to provide more regulatory oversight and promote fair competition in the market. However, the stringency of these obligations adds complexity that may hinder their implementation.

While these new rules may have been introduced to strengthen user protections, they may raise concerns regarding the challenges associated with their practical application.

3.4.3. NATIONAL ROAMING OBLIGATIONS

Following the EECC, the ECL introduces the concept of national roaming. This is viewed as a significant regulatory mechanism to overcome physical and economic barriers to the provision of services and networks requiring access through usage rights for radio spectrum frequencies, particularly for mobile network operators serving end-users.

When accessing and sharing passive infrastructure is insufficient to ensure adequate coverage, the regulator may enforce active infrastructure sharing or mandate the establishment of national roaming agreements. However, such obligations may only be imposed under specific conditions, such as unavoidable physical or economic constraints – such as limited access in protected areas due to building restrictions – leading to inadequate or non-existent service availability for end-users.

This mechanism is justified solely when passive infrastructure sharing and access prove insufficient.

3.4.4. INTERNATIONAL ROAMING

International roaming, initially introduced with early 2G mobile networks, is a service that enables customers of one provider to access mobile services through the networks of other operators in foreign countries. This essential service allows users to make and receive voice calls, send and receive text and multimedia messages, and access the internet while travelling. It is one of the most important factors in the widespread adoption of mobile services, particularly over GSM networks.

Roaming costs are traditionally higher than domestic networks, as third-party operators set fees for visiting users. Regulatory pressure in the European Economic Area (EEA) has led to a significant reduction in roaming costs. Since the introduction of the EU's "Roam Like at Home" initiative in 2017, users within the EEA pay the same rates for international roaming as they do on their home network. Costs outside the EEA remain higher than home network costs.

It is important to note that international roaming is not regulated by the ECL but by European regulations, specifically by [Regulation \(EU\) 2022/612 of the European Parliament and the Council of 6 April 2022](#).

3.5. REGULATORY CONTROLS IN RETAIL MARKETS

ANACOM's imposition of specific obligations tailored to retail markets is contingent upon two conditions:

- The absence of effective competition; and
- Imposing additional obligations would not align with the overall objectives of regulation.

The ECL aims to prevent operators from engaging in excessive pricing and discriminatory practices against end-users.

4. USERS' RIGHTS, UNIVERSAL SERVICE AND ADDITIONAL MANDATORY SERVICES

4.1. END-USERS' RIGHTS

Companies, including OTT providers, that offer networks or services are now fully subject to the end-users' rights set out in the ECL.

As an exception applies to the micro-entities¹⁰ offering number-independent one-to-one communications services, while exempt from these regulations, they are still required to inform end-users about this exemption.

According to the ECL, end-user rights extend to consumers, micro-entities, small enterprises, and non-profit organisations that do not waive such rights.

Under the ECL, organisations are entitled to:

- Receive written information about service terms and conditions;
- Be notified at least 15 days in advance of the operator's intention to discontinue a specific service;
- Access information on expected and actual service levels;
- Receiving itemised invoices, including itemised cost breakdown and information on the end of the minimum contractual period;
- Benefit from increased protections in cases of unauthorised contracts;
- Tools to view pricing and other contractual conditions;

¹⁰ A micro-entity is a very small company employing fewer than ten workers, has a total annual turnover or annual balance sheet not exceeding two million euros, and fulfils independence criteria, i.e., it is not legally controlled or otherwise related to companies that do not meet these requirements.

- Receive immediate and proportional reductions in monthly fees for service quality failures, in addition to any other applicable compensation;
- Maintain continuous access to the contracted services and receive notice of service suspension; and
- The right to number portability.

The protection of end-users became the foundation of the ECL. Nonetheless, the legislator's attempt to empower users has led to unintended consequences, including a lack of clear guidelines, creating an unwelcome and unexpected sense of uncertainty. For example, under the ECL, operators are prohibited from unjustifiably discriminating against customers based on nationality or place of residence; however, no specific guidelines have been provided regarding what may be considered justifiable discrimination. This is a sensitive matter and may lead to disputes in the future.

The ECL seeks to empower end-users by ensuring fair treatment within the market. The protection of end-users is a fundamental aspect of the ECL. As part of this framework, the non-discrimination rules ensure that consumers have equal access to services and that companies cannot discriminate against users based on their nationality or residence.

ANACOM plans to update the portability regime through a new regulation, replacing the 2005 version. According to the public consultation, the primary goal is to maintain the core structure of the existing framework. However, the new regulation introduces several key changes, particularly aimed at protecting consumers, including:

- Prohibiting certain portability fees for end users
- Requiring recipient providers to ensure both the portability of numbers and their activation.

4.2. AGREEMENT INFORMATION REQUIREMENTS

The ECL complements the framework for the disclosure of pre-contractual information. Under the ECL, public communication providers and operators, excluding machine-to-machine service providers, are now required to provide consumers with essential information (under the Consumer Protection Act) about key aspects of the agreement before signing the contract. Among other things, operators are required to disclose information on:

- The main characteristics of the goods or services;
- The provider's identity, including the company's name, postal address and telephone number, and other contact information;
- The full price of the services, including the fixed fees, applicable taxes, additional setup charges, and other relevant costs, including maintenance fees; and

- The price calculation method in cases where, due to the nature of the service, the price cannot be determined before the agreement.

The ECL also requires operators to adopt and make available a summary of the user contract terms and conditions.

4.3. CONTROL MECHANISMS FOR CONTRACTING AND INVOICING

According to the ECL, billing for publicly available electronic communications services must be conducted monthly. Invoices for these services must be sent, free of charge, to the end user and must include the following details:

- A breakdown of the services provided along with the corresponding prices;
- The remaining term to complete the minimum contractual obligations and, when applicable,
- The details of the social tariff for broadband Internet access services and its application for consumers with low incomes or special social needs.

4.4. DURATION OF THE AGREEMENT

Due to the prevalence of bundled services (triple, quadruple and quintuple play offerings with implied discounts¹¹), particularly in the residential fixed-line market segment, local operators tend to waive setup fees and replace them in favour of minimum contract periods, which, if breached, steep early termination fees are applied. Therefore, it is no surprise that minimum contract periods¹², have become one of the most debated issues in consumer law.

However, the ECL still emphasises its stance on minimum contract periods and early termination charges, opting for more targeted changes, such as clauses introducing the concepts of *initial* and *follow-up* minimum contract periods and setting caps for both.

¹¹ In the 3Q2022, only 15,4% of fixed residential accesses was attributable to single play (ie, internet access or simple fixed telephony).

¹² Which literally translates as commitment period, loyalty period or a customer lock in period.

Consequently, operators providing publicly available communication services are required to offer services without any customer lock-in periods, with the minimum contract period limited to 24 months.

Furthermore, the consumer's subscription to supplementary services or terminal equipment cannot be used to extend the initial contractual loyalty period unless the consumer explicitly agrees to it at the time of subscription.

4.5. TERMINATION OF THE AGREEMENT

Regarding contract termination, in its quest to protect consumers, the ECL introduced significant deviations to general legal principles, particularly on contract default and liability.

According to the ECL, the suspension of services for defaulting non-consumer end-users is allowed subject to prior notice. It should be noted that discontinuing access to emergency services is strictly prohibited.

A notice must be issued for defaulting consumer end-users, initiating a grace period of at least 30 days. Following this period, an additional 30-day suspension period is permitted. The contract will automatically be terminated without further notice once this second period elapses and the necessary notification requirements are fulfilled.

On the other hand, in cases where services are unavailable for longer than 24 hours, the ECL imposes a proportional reduction in the bill, regardless of any consumer's request. If the service remains unavailable for over 15 days, the end-user has the right to terminate the agreement without incurring any cost.

Also, in this case, the ECL outlines additional specific causes for breach of agreement beyond those previously mentioned.

For instance, in the event of a *"significant discrepancy between the actual performance of services and the performance outlined in the agreement"*, the end-user may demand corrective measures, but the ECL does not set out the measures that may be required. The ECL gives the end-user the right to terminate the agreement without penalty. The use of such arguably vague concepts may lead to controversies and possibly to decisions that can set a standard for their application.

As mentioned above, the ECL introduced specific changes regarding the admissibility of minimum contract periods, along with the mentioned restrictions; the ECL limits early termination charges when customers fail to comply with the agreed-upon lock-in periods.

The ECL recognises that a customer may be able to terminate their agreement with an operator without incurring early termination charges if the consumer:

- Changes their address, and the operator cannot demand additional charges if it cannot provide the contracted or equivalent service in terms of characteristics and price at the new address. The consumer changes their primary residence permanently, and the operator is unable to provide the same or equivalent service at the new location;
- Loses disposable monthly income due to involuntary unemployment;
- Is permanently or temporarily incapacitated for work or loses monthly income due to a long-term illness;
- Moves to a third country, defined as an unforeseeable move of the contract holder's permanent residence outside of national territory; or
- Is absent from their residence due to imprisonment or reliant on third-party care.

Although the ECL adds these breach of contract causes to protect users' interests that the legislator deemed fair, the overuse of vague terms, such as "unforeseeable move (...) out of national territory" or "loss of income due to illness", may lead to challenges in the implementation of the new legislation.

Additionally, ANACOM has introduced a contract termination platform for consumers. This platform allows users to submit termination requests and digitally access contract information.

4.6. UNIVERSAL SERVICE

The ECL has established these causes of breach of agreement with practical implications to reinforce end-users' protection and ensure a fair termination process.

According to the ECL, universal service represents a minimum set of services that must be available to all consumers at an affordable price within the national territory, considering specific national conditions. The aim is to prevent social exclusion caused by a lack of access, enabling citizens to actively participate in social and economic life.

Universal service should guarantee the availability of the following:

- Reliable broadband internet access at a fixed location;
- Voice communication services, including the necessary underlying connection, at a fixed location; and
- Specific measures to ensure equivalent access for customers with disabilities to services available to other users.

The ECL introduces significant changes to universal service, particularly by promoting social regulation, primarily through the so-called "social internet tariff".

4.7. ADDITIONAL MANDATORY SERVICES

According to the ECL, the Government can demand operators to provide additional services to the public within the national territory, beyond the universal service obligations. However, in such cases, a compensation mechanism involving specific companies should be granted.

5. TRANSPORT OBLIGATIONS AND EQUIPMENT

ANACOM may, for public interest reasons, impose signal transmission obligations on companies operating in the television and radio programming services market and provide adequate compensation.

To comply with the ECL, digital television equipment must be capable of decoding digital signals and reproducing signals broadcast without encryption. Additionally, providers are required to facilitate the interoperability of equipment to encourage reuse.

Lastly, any activities involving illegal devices, including manufacturing, importing, distributing, selling, renting, installing, maintaining, promoting, acquiring, or using such devices, are considered a serious administrative infraction.

An illegal device refers to any equipment or software specifically designed or adapted to enable unauthorised access to protected services in an intelligible form without the service provider's consent.

6. FEES SUPERVISION AND CONTROL

6.1. RATES

Operators providing communication networks and services under the general authorisation framework are subject to an annual fee. This fee is determined based on the administrative costs associated with managing, overseeing, and enforcing the general authorisation framework, the related rights of use and specific conditions.

Additionally, operators are responsible for additional fees related to the following:

- The allocation and renewal of frequency rights;
- The allocation, reservation, and renewal of numbering resource rights; and
- The allocation of rights of way.

6.2. SUPERVISION AND CONTROL

6.2.1. DISCLOSURE OF INFORMATION

To effectively carry out its responsibilities, ANACOM is authorised to access and request information from operators when necessary, provided the request is objectively justified, non-discriminatory and reasonable.

Specifically, companies must provide financial data and any additional information requested by ANACOM or other competent authorities, as long as the need is established, to ensure compliance with administrative charges, licensing conditions, and other regulatory requirements. In general, operators must provide financial and technical information to guarantee compliance with obligations related to the services they are authorised to provide.

6.2.2. CONTROL

As a regulatory body, ANACOM is responsible for overseeing the enforcement of the ECL, in addition to the Portuguese Food and Economic Security Authority (*Autoridade de Segurança*

Alimentar e Económica – "ASAE") and the Portuguese Tax Authorities (Autoridade Tributária e Aduaneira). ANACOM is also in charge of supervising the electronic communications sector as a whole.

However, under the ECL and other relevant legislation, judicial courts and central Government agencies, such as the national cybersecurity agency (*Centro Nacional de Cibersegurança – "CNCS"*), hold a level of jurisdiction over the sector. These include the previously mentioned **ANEPC** (the emergency and civil protection agency), the Food and Economic Security Authority (*Autoridade de Segurança Alimentar e Económica – "ASAE"*), the Competition Authority (*Autoridade da Concorrência – "AdC"*), the Tax and Customs Authority (*Autoridade Tributária e Aduaneira – "AT"*) and the district council's authorities.

6.2.3. NEW SANCTIONING FRAMEWORK

The ECL has significantly expanded its sanctioning framework. It now includes more than 120 administrative infractions, of which nearly 97% are considered severe or very serious, potentially resulting in fines of up to one million or five million euros.

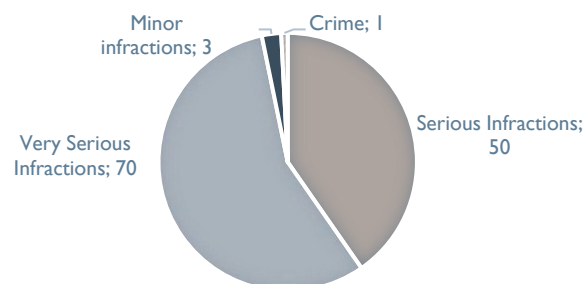


Figure 1 - Distribution of administrative offences foreseen by the ECL according to their seriousness.

Regarding compliance with the end-consumer rules, more than 40 applicable sanctions account for over a third of the total ECL's administrative infractions under the ECL.

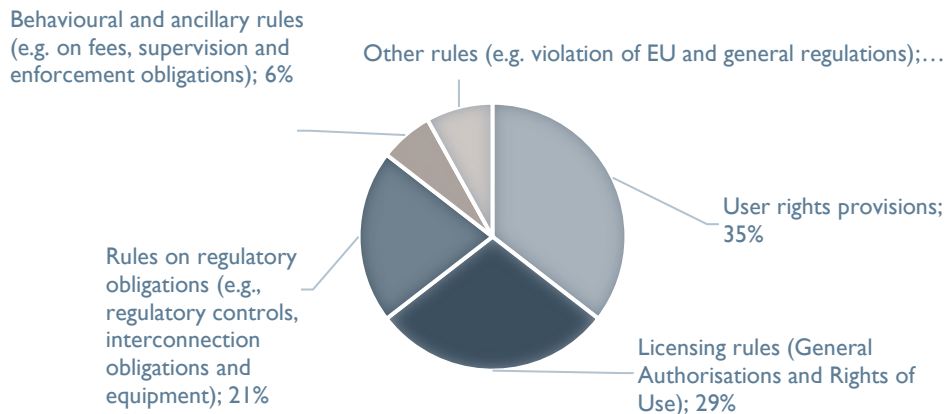


Figure 2 - Distribution of sanctioning rules according to the subject (as a % of all administrative offences covered by the ECL).

Under the ECL, issuing guidelines, recommendations, or instructions to employees, agents, or business partners that may lead to a violation of rules or ANACOM's instructions is considered a severe administrative infraction.

As opposed to the initial version of the bill presented by the Government in May 2022¹³, the ECL does not include provisions for individual liability of members of management bodies and company directors.

Alongside a comprehensive list of violations for which operators are liable, under the ECL, a severe or very serious administrative offence occurs whenever an operator issues its employees, agents, or business partners with guidelines, recommendations, or instructions likely to result in a breach of rules on ANACOM's instructions.

It should be noted that this type of provision is rare within Portuguese law and seems to be a compromise when compared to the bill submitted to Parliament¹⁴ that would have made company directors and senior staff operators personally liable. Considering the broad and ambiguous nature of these sanctioning provisions, we expect to see a rise in disputes and the consolidation of case law concerning how sanctions should be applied.

¹³ Proposal of Law 6/XV 22 April 2022 (available at www.parlamento.pt and that can be accessed [through this link](#)).

¹⁴ Proposal of Law 6/XV 22 April 2022 (available at www.parlamento.pt and that can be accessed [through this link](#)).

7. OPEN INTERNET PRINCIPLE

The open internet principle ensures that citizens of the European Union have unrestricted access to online content and services, regardless of their location or time, without discrimination or interference from internet service providers.¹⁵

In Portugal, this principle is reflected in national law through the ECL, which states that any actions taken to maintain the quality of internet access must comply with Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015.

The open internet principle is crucial today, where information is widely accessible online. It ensures that individuals and businesses have unrestricted and equal access to online content and services. For instance:

- Internet service providers are prohibited from blocking or slowing down their competitors' content, applications, or services, except in limited circumstances, such as maintaining network security and integrity. Under this principle, e.g., internet providers must prevent unjustifiable blocking or slowing down content, applications, or services, except in limited cases, such as to maintain network security and integrity;
- Similarly, service providers must provide equal access to online content and services, free from undue interference driven by their interests and cannot prioritise traffic on their networks based on payments from a specific source.

¹⁵ Cf. Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 establishes the principle of the open internet in the EU, as amended by Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018.

In conclusion, it's important to note in cases of violation of the open Internet provisions, EU Member States are obligated to enforce sanctions that are effective, proportional, and dissuasive. Service providers found in breach may face both administrative and financial penalties.¹⁶

¹⁶ From May 2023 to April 2024, ANACOM received a total of 2,100 complaints concerning electronic communications services. The most notable reasons for these complaints were: (i) fixed line service failures, which accounted for 56%, (ii) issues with the speed of fixed internet access, representing 23%, and (iii) mobile service failures, making up 9% of the total complaints. (For more information, see ANACOM's Open Internet Report 2023-2024, published on June 28, 2024, [available via this link.](#))

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