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# Intellectual Property, Media and IT

Legal Flash | Portugal

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- › **Bill 44/XIV - transposing Directive (EU) 2018/1808 (Audiovisual Media Services Directive) into Portuguese law**



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## I. Amendments to Law 27/2007 of July 30

Law 27/2007 of July 30, in its original version, regulates access to television and its operation, as well as the offering of on-demand audiovisual services to the public. Bill 44/XIV, passed in the global final vote on October 23, 2020 and amending Portuguese Law 27/2007 of July 30 by extending its scope to regulate the access to and the operation of all audiovisual communications, now regulates several aspects of offering video-sharing platform services to the public, as well as the rules on their contents.

### **Restrictions on freedom of schedule**

This revision includes new limits on freedom of television scheduling.

The law, which already prohibited televising programs capable of clearly and seriously damaging the free development of children's and young people's personalities or image and the protection of the privacy of private and family life, now focuses specifically on cases of pornography and gratuitous violence. These impositions affect open program services, regardless of whether a subscription is required, which are defined by law, respectively, as "available to the public without consideration" and "available to the public for a consideration for access to the distribution infrastructure or its use." If access to the program is conditional, these restrictions do not apply.

In cases in which the broadcast of programs may only have a negative impact on the development of children's and young people's personalities, their broadcast hours will be from 12 a.m. to 6 a.m. These new hours are more restrictive than those previously imposed by law for these cases, which started at 10.30 p.m.

Programs from on-demand audiovisual media services must implement parental control functionalities for those who have parental responsibilities to prevent children and young people from accessing these contents if they see fit.

### **Extension of the sponsorship ban**

Under the previous version of Law 27/2007 of July 30, news services and political information programs could not be sponsored. This ban has now been extended to all current affairs programs, which cannot be associated with any sponsorships.

Product placement in news and current affairs programs, in consumer affairs programs, religious programs, and children's programs is now expressly prohibited.



## **Integrity principle**

The new law bans concealment through overlaying for commercial purposes and the alteration through cuts, modifications, inserts before or after broadcasts, or interruptions of the audiovisual communication services.

There are some exceptions to those prohibitions, as in the case of overlaying that (i) provide communication services if generated by the service recipient; (ii) are a user interface control element required to operate the device or navigate through the program, such as volume bars, search bars, navigation menus, channel lists, and others; (iii) make the devices, services, and contents accessible to people with disabilities.

## **Protection measures**

Changes to television program service distribution contracts must be notified 30 days before the scheduled date for the changes to come into force, and when sending this communication, the consumer must be explicitly informed about the possibility of terminating the contract. The legislative change now emphasizes that this power of termination must prevail over any contract clause intended to hinder or prevent the consumer's termination of the contract. The new law also establishes more exceptions to this power of termination. These include cases in which (i) new channels are added, with those offered with the contracted service remaining the same; (ii) there is a reduction in the prices of the contracted services; and (iii) the change only affects features that can be separated from the service, such as changes in movie rental prices.

The processing of children's and young people's data is now prohibited. Data collected or generated by television program service operators, by on-demand audiovisual service operators, or by video-sharing platform services, when collected from children or young people may not be processed for commercial purposes, such as direct marketing, profiling, or behavioral advertising.

Video sharing platform suppliers are obliged to implement measures to protect human rights, children, young people, and consumers. These platforms must use certain functionalities to achieve these purposes, such as:

- i) including in the terms of use of video sharing platform services certain restrictions and sanctions regarding sharing videos generated by users that may damage the integral, physical, mental, or emotional development of children and young people, incite violence, hatred, and racism, that are not transparent regarding their commercial intentions, or that conceal some form of advertising;
- ii) creating and using transparent mechanisms that are easy to use and enable the audience of video sharing platforms to communicate, signal and classify video contents; and



- iii) making parental control systems available to end users regarding contents that may damage the physical, mental, or emotional development of children and young people.

### **Reinforcement of the ERC's powers**

To monitor compliance with the new measures, the law reinforces the powers of the Regulatory Entity for Social Communication (ERC). The ERC now has the power to intervene in the regulation of paid television services and online video sharing platforms.

ERC now has the power to terminate and punish offenses committed through on-demand audiovisual services, even if they are provided by operators in another Member State, provided it is proven that these services fully or mainly target Portugal and that their respective operators became established in another Member State to bypass the more rigorous Portuguese law to which they would otherwise be subject.

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## **II. Amendments to Law 55/2012 of September 6**

Law 55/2012 of September 6 establishes the principles for action in the promotion, development and protection of film and the arts and of film and audiovisual activities. The changes to this law seek to introduce new forms to boost these industries.

### **Taxes**

The exhibition tax, which is equivalent to 4% of the price the advertiser pays on commercial advertising broadcast by television operators, movie theaters, and on-demand audiovisual services, now also applies to advertising broadcast on video sharing platform services. The advertiser pays this tax.

Starting from the date the new law comes into force, subscription on-demand audiovisual service operators must pay a new annual fee corresponding to 1% of their relevant profits. For the purposes of this fee, the law defines relevant profits as those that are made in the Portuguese market and that derive from audiovisual commercial communications broadcast or displayed on television services, on-demand audiovisual services, video-sharing platform services, and in the programs that those services broadcast or make available, even if they are within another Member State's jurisdiction.

The revenue from these fees will be transferred to the Portuguese Film and Audiovisual Institute, and it will be used to support the movie and audiovisual industry.

To have full effects in the Portuguese legal system, the bill is now to be published in the Official Gazette of the Republic.



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