

B. ELECTRONIC COMMUNICATIONS LAW AND OTHER RELEVANT STATUTORY INSTRUMENTS

- > **Electronic Communications Law – Law no. 5/2004 of 10 February, rectified by Statement no. 32-A/2004, published on 10 April, and amended by Decree-Law no. 176/2007 of 8 May**

- > **Processing of personal data and protection of privacy in the electronic communications sector – Law no. 41/2004 of 18 August**

- > **Bases of the concession of the telecommunications public service – Decree-Law no. 31/2003 of 17 February**

ELECTRONIC COMMUNICATIONS LAW

Law no. 5/2004 of 10 February, rectified by Statement no. 32-A/2004, published on 10 April, and amended by Decree-Law no. 176/2007 of 8 May

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¹ This table of contents is not part of the Electronic Communications Law. It was developed by ANACOM with the purpose only to facilitate the consultation of the document.

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ELECTRONIC COMMUNICATIONS LAW

Law no. 5/2004 of 10 February, rectified by Statement no. 32-A/2004, published on 10 April, and amended by Decree-Law no. 176/2007 of 8 May^{2 3}

TITLE I

General part

Article 1

Subject

The present law establishes the legal regime applicable to electronic communications networks and services and to associated services, and defines the assignments of the national regulatory authority in this field, in respect of the transposition of Directives nos 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, all of the European Parliament and of the Council of 7 March 2002, and of Directive 2002/77/EC of the Council of 16 September.

Article 2

Scope

1 – This law does not apply to the following:

- a) Services of the information society, as defined in Decree-Law no 58/2000 of 18 April, which do not wholly or mainly consist of the conveyance of signals over electronic communications networks;
- b) Services which provide or which exercise editorial control over content transmitted over electronic communications networks and services, including audio-text services;
- c) The private networks of or under the responsibility of the Ministry of National Defence or of the security and emergency forces and services, which networks are governed by specific legislation;
- d) The Government computer network managed by the Government Computer Network Management Centre (CEGER), as well as networks created in order to pursue the aims provided for in paragraph 1 of article 1 of Decree-Law no 184/98 of 6 July.

2 – The provisions of this law are without prejudice to:

- a) The regime governing the free circulation, placing in the market and putting into service of radio equipment and telecommunications terminal equipment, as well as the regime governing the respective assessment of conformity and marking procedures as approved by Decree-Law no 192/2000 of 18 August;

² This is not an official translation of the law.

³ Law no. 5/2004 of 10 February, published in *Diário da República*, no. 34, I Series - A, of 10 February 2004; Statement no. 32-A/2004, published in *Diário da República*, no. 85, I Series - A, of 10 April 2004; and Decree-Law no. 176/2007 of 8 May, published in *Diário da República*, no. 88, I Series - A, of 8 May 2007.

- b) The regime governing the installation of telecommunication infrastructures in buildings as provided for in Decree-Law no 59/2000 of 19 April;
- c) The regime applicable to radiocommunications networks and stations as provided for in Decree-Law no 151-A/2000 of 20 July;
- d) The regime applicable to the use of the Personal Radio Service – Citizen’s Band (SRP-CB) as provided for in Decree-Law no. 47/2000 of 24 March;
- e) The legal regime applicable to radio amateurs.

3 – The provisions of the present law are without prejudice to measures taken at Community or national level to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

4 - The provisions of the present law are without prejudice to measures taken at Community or national level to pursue public order and security objectives, in particular with regard to the rail sector and the road sector.

Article 3

Definitions

For the purposes of the present law:

- a) «Access» means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis for the purpose of providing electronic communications services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services, including interactive platforms; access to virtual network services;
- b) «Unbundled access to the local loop» means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;
- c) «Shared access to the local loop» means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator, authorising the use of the non -voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;
- d) «Full unbundled access to the local loop» means the provision to a beneficiary of access to the local loop or local sub loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;
- e) «Subscriber» means 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;

- f) «General authorisation» means the legal framework established by the present law and by the regulations of the national regulatory entity, ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with the present law;
- g) «Consumer» means any natural person who uses or requests a publicly available electronic communications service for non-professional purposes;
- h) «Enhanced digital television equipment» means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
- i) «Harmful interference» means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations;
- j) «Interconnection» means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;
- l) «API (application program interface)» means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital radio and television services;^(*)
- m) «Local loop» means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;
- n) «Transnational markets» means markets identified in paragraph 5 of article 59, covering the Community or a substantial part thereof;
- o) «Number» means a series of digits indicating a electronic communication network termination point, comprising the information necessary in order to route calls to that termination point;
- p) «Geographic number» means a number from the national numbering plan containing certain digits of geographic significance, used for routing calls to the physical location of the network termination point (NTP);
- q) «Non-geographic number» means a number from the national numbering plan that is not a geographic number, including in particular mobile, freephone and premium rate numbers;
- r) «Provision of an electronic communications network» means the establishment, operation, control or making available of such a network;
- s) «Operator» means an undertaking providing or authorised to provide a public communications network or an associated facility;

t) «Public pay telephone» means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

u) «NTP (network termination point)» means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the network termination point is identified by means of a specific network address, which may be linked to a subscriber number or name;⁽¹⁾

v) «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;

x) «Electronic communications network» means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by 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;

z) «Public communications network» means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

aa) «Public telephone network» means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;

bb) «National regulatory authority (NRA)» means the authority performing regulatory, supervising, monitoring and sanctionary functions in the scope of electronic communications networks and services, as well as associated facilities and services, which is the Instituto de Comunicações de Portugal – Autoridade Nacional de Comunicações (ICP – ANACOM), the Statutes of which were approved by Decree-Law no 309/2001 of 7 December;

cc) «Electronic communications services» means 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, without prejudice to the exclusion referred to in point b) of paragraph 1 of article 2;

dd) «Wide-screen television service» means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services;

ee) «Publicly available telephone service» means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of

service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services;

ff) «Universal service» means the minimum set of services, defined in this law, of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;

gg) «Conditional access system» means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

hh) «Local sub-loop» means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;

ii) «User» means a legal entity or natural person using or requesting a publicly available electronic communications service;

jj) «End-user» means a user not providing public communications networks or publicly available electronic communications services.

TITLE II

National regulatory authority and regulatory principles

CHAPTER I

General provisions and regulatory principles

Article 4

National regulatory authority

1 – The NRA is charged, in accordance with its assignments, with the functions of regulation, supervision, monitoring and sanctioning provided for in the present law.

2 – The statutes of the NRA ensure:

a) Its independence as an organisational and financial body, functionally separated from the Government, and endowed with the means necessary for the execution of its functions;

b) Its independence as an organisational and financial body, functionally separated from undertakings which provide electronic communications networks and services and equipment;

c) The effective separation of regulatory functions from powers associated with the ownership or control of undertakings of the sector upon which the State retains ownership or control.

Article 5

Regulatory objectives

1 – The objectives of electronic communications regulation to be pursued by the NRA are:

- a) To promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services;
- b) To contribute to the development of the internal market of the European Union;
- c) To promote the interests of citizens, pursuant to the present law.

2 – In respect of point a) of the preceding paragraph, the NRA is charged with:

- a) Ensuring that users, including users with disabilities, derive maximum benefit in terms of choice, price and quality;
- b) Ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- c) Encouraging efficient infrastructure investment, and promoting innovation;
- d) Incentivising the efficient use of radio frequencies and numbering resources and ensuring their effective management.

3 – In respect of point b) of paragraph 1, the NRA is charged with:

- a) Removing existing obstacles to the provision of electronic communications networks, of associated facilities and services and of electronic communications services at a European level;
- b) Encouraging the establishment and development of trans-European networks, the interoperability of pan-European services and end-to-end connectivity;
- c) Ensuring that, in equivalent circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- d) To cooperate, in a transparent manner, with the European Commission and regulatory authorities of communications of other Member States of the European Union, in order to ensure the development of a regulatory practice and the consistent application of the common regulatory package framework for electronic communications networks and services.

4 – In respect of point c) of paragraph 1, the NRA is charged with:

- a) Ensuring that all citizens have access to the universal service as defined in the present law;
- b) Ensuring that consumers enjoy a high level of protection in their relationship with providers of electronic communications services and networks, in particular through the establishment of procedures for the resolution of disputes, which procedures shall be simple and inexpensive and directed by bodies that are independent of the parties in dispute.
- c) Contributing to the guarantee of a high level of protection of personal data and privacy;
- d) Promoting the provision of clear information, and requiring in particular that tariffs and conditions for using publicly available electronic communications services are transparent;
- e) Addressing the needs of specific social groups, in particular users with disabilities;
- f) Ensuring that the integrity and security of public communications networks are maintained.

5 – All decisions and measures taken by the NRA shall be reasonable and proportionate to the regulatory objectives established in the present article.

6 – The NRA is charged with adopting all reasonable and proportionate measures which are necessary to ensure that any undertaking is able to provide electronic communications services or to establish, extend or provide electronic communications networks.

7 – The decisions and measures taken by the NRA shall, at all times, have basis in the provisions of the preceding paragraphs.

8 – In the performance of its regulatory remit as specified in this law, and in particular with respect to ensuring effective competition, the NRA shall seek to ensure the technological neutrality of regulation, without prejudice to the adoption of suitable measures for the promotion of specific services, where such measures are necessary for the pursuit of the regulatory objectives stipulated in this article.

9 – The NRA may contribute, within the scope of its remit, to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as pluralism, in particular in respect of the media.

10 – Every public entity and authority shall, within the scope of its respective remit, likewise contribute to achieving the objectives of electronic communications regulation.

Article 6

Consolidating the internal market

1 – The NRA shall, in the exercise of its powers, contribute to the development of the internal market, cooperating with other national regulatory authorities and with the European Commission in a transparent manner, in order to seek agreement on the types of instruments and remedies that are best suited for addressing particular situations in the market.

2 – For the purposes of the preceding paragraph and in the cases provided for in the present law, the specific procedure set out in article 57 shall be followed.

3 – The NRA shall, in the performance of its functions, take into account the recommendations of the European Commission on the harmonised application of the regulatory framework applicable to electronic communications, having regard to the pursuit of the regulatory objectives set forth in article 5. In the event that the NRA decides not to follow such a recommendation, it shall inform the European Commission of this decision and the grounds therefor.

Article 7

Cooperation

1 – The NRA and the competent authorities and services, particularly in the area of consumer protection, shall jointly cooperate, whenever necessary, in matters of common interest.

2 – The NRA and Autoridade da Concorrência (The Competition Authority) shall cooperate with each other in matters related with the application of the legal regime of competition in the electronic communications sector.

3 – In the cases set out in articles 37 and 61, the NRA shall request the prior opinion of Autoridade da Concorrência (The Competition Authority).

4 – Where, within the scope of cooperation as provided for in the preceding paragraphs, the NRA and other competent entities exchange information, particularly in respect of competition matters, the entity in receipt of such information shall ensure the same level of confidentiality as authority from which it was obtained is bound to provide; the NRA and the Competition Authority may use said information in the exercise of their respective powers.

Article 8

General consultation procedure

1 – Where the NRA, in the exercise of the powers set forth in the present law, intends to take measures which have a significant impact on the relevant market, it shall publish the respective draft of said measure and give interested parties the opportunity to comment on it, for which purpose a fixed period, of not less than 20 days, shall be provided.

2 – For the purpose of the preceding paragraph, the NRA shall publish the adopted consultation procedures.

Article 9

Urgent measures

1 – Without prejudice to the provisions of general law, the NRA may, in exceptional circumstances, adopt immediate measures which are proportionate and provisional without following the procedure set out in articles 8 and 57, as applicable, where the NRA considers that, in order to safeguard competition and protect the interests of users, the need to act is urgent.

2 – In the situations referred to in the preceding paragraph, the NRA shall, as soon as possible afterwards, notify the European Commission and other national regulatory authorities of the measures adopted and the reasons therefor.

3 – In the event that the NRA decides to render the provisional measure permanent or extend the period of its application, the provisions of article 57 shall apply.

Article 10

Administrative dispute resolution

1 – The NRA is charged, at the request of either party, with the resolution, by way of a binding decision, of any dispute connected to the obligations arising under this law and between undertakings subject thereto in the national territory, without prejudice to the possibility of appealing to the courts.

2 – The intervention of the NRA shall be requested within a period of one year from the date on which the dispute commenced.

3 – The decision of the NRA shall, except in exceptional circumstances, be issued no later than four months following the date on which the request was made, which decision and grounds therefor shall be notified to the interested parties and, provided that commercial confidentiality is safeguarded, published.

4 – In the resolution of disputes referred to in the present article, the NRA shall make a decision that is in accordance with the provisions of this law and has regard to the pursuit of the objectives of regulation established in article 5.

5 – In the course of a dispute resolution, all undertakings providing electronic communications networks or services shall cooperate fully with the NRA, specifically by complying with any requests made in this scope.

6 – Decisions of the NRA issued pursuant to the present article may be appealed under the terms of paragraph 2 of article 13.

Article 11

Refusal of the dispute resolution request

1 – The NRA may only refuse dispute resolution request made pursuant to the preceding article in the following cases:

- a) Where the request does not concern the compliance with the obligations arising from the present law;
- b) Where the period provided for in paragraph 2 of the preceding article has expired;
- c) Where the NRA deems that other mechanisms, including mediation, exist and would better contribute to the resolution of the dispute in a timely manner, in accordance with the provisions of article 5.

2 – The NRA shall notify the parties without delay of the refusal of request, and, in the case laid out in point c) of the preceding paragraph, of the most adequate means for the dispute resolution.

3 – Where, in the case laid out in point c) of paragraph 1, after four months from the notification of the parties the dispute is not resolved, and where the dispute has not been brought before the courts, the NRA may initiate the procedure provided for in the preceding article, if either party requests it, the dispute resolution procedure formerly initiated being extinguished.

4 – Any party who is the subject of a decision of the NRA, issued pursuant to the present article, may appeal against such decision, on the terms of paragraph 2 of article 13.

Article 12

Resolution of cross-border disputes

1 – In the event of a cross-border dispute arising in the scope of the obligations resulting from the regulatory framework on electronic communications, between undertakings subject thereto and established in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, any party may refer the dispute to the competent NRA, without prejudice to the possibility of either party bringing an action before the courts.

2 – In the case mentioned in the preceding paragraph, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the

provision of article 5, conforming the decisions taken with the regulatory framework on electronic communications.

3 – National regulatory authorities may jointly decide to refuse to resolve a dispute, pursuant to point c) of paragraph 1 and to paragraphs 2 and 3 of the preceding article.

Article 13

Judicial review

1 – Any party who is subject to decision, order or other measure adopted by the NRA in the scope of breach proceedings, resulting from the application of the regulatory framework on electronic communications, may appeal against such measure to the commerce courts.

2 – Any party who is subject to other acts performed by the NRA may appeal against such acts to the administrative courts, pursuant to applicable law, with the compulsory intervention of three experts, appointed by each party and the third by the court, to appraise the merits of the appealed decision.

3 – The appeals against decisions taken by the NRA that, in the scope of breach proceedings, determine the application of fines or additional sanctions, have suspensive effect.

4 – The appeals against decisions of application of compulsory penalty payments, as well as other decisions, orders, and further measures adopted in the scope of breach proceedings initiated by the NRA, have a mere devolutive effect.

5 – The provisions of the following articles and, secondarily, the general regime of breaches, apply to breach proceedings initiated in the scope of the present law.

6 – Where an appeal against a decision made by the NRA is filed, the NRA shall submit the briefs to the Prosecution Office within 20 working days, attaching allegations thereto, where they exist.

7 – Without prejudice to the provision of article 70 of Decree-Law no. 433/82 of 27 October, as amended by Decree-Law no. 244/95 of 14 September, the NRA may also attach other elements or information deemed relevant for the decision under consideration, being entitled to supply evidence as well.

8 – The NRA, the Prosecution Office and the defendants may oppose to an order of the court, devoid of a prior trial.

9 – In the context of an appeal against a decision taken within breach proceedings, the waiver of the accusation on the part of the Prosecution Office depends on the agreement of the NRA thereto.

10 – Where a trial takes place, the court shall decide on grounds of the evidence presented in the course of the hearing, as well as of evidence gathered in the administrative stage of the breach proceedings.

11 – The NRA is entitled to lodge an appeal autonomously against decisions made in the impugnation proceedings allowing appeal.

12 – The decisions of commerce courts allowing appeal, pursuant to the general regime of breaches, may be contested at the Court of Appeals, which is the court of last resort.

13 – Against the judgements of the Lisbon Court of Appeals lie no further appeals.

CHAPTER II

Frequencies, numbers and markets

Article 14

Radio-electric public domain

The space where radio waves may propagate constitutes public domain of the State.

Article 15

Frequencies

1 – The management of the spectrum, understood as the set of frequencies associated to radio waves, is incumbent upon the NRA.

2 – The NRA shall plan out frequencies, in the scope of the management of the spectrum, in compliance with the following criteria:

- a) Availability of radio spectrum;
- b) Guarantee of conditions of effective competition in the relevant markets;
- c) Effective and efficient use of frequencies.

3 – The NRA shall allocate and assign frequencies on the basis of selection criteria that must be objective, transparent, non-discriminatory and proportionate.

4 – The NRA shall promote a harmonised usage of frequencies in the European Union in order to ensure the effective and efficient use thereof, in the scope of Decision no. 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision).

Article 16

National Frequency Allocation Plan

1 – It is incumbent upon the NRA to publish annually the National Frequency Allocation Plan (NFAP), which shall comprise:

- a) The frequency bands and number of channels already allocated to undertakings providing publicly available electronic communications networks and services, including the date of allocation revision;
- b) The reserved frequency bands and those available in the following year, in the scope of electronic communications networks and services, whether publicly available or not, specifying the cases where the rights to use frequencies are required, as well as the respective allocation procedure;
- c) The frequencies the rights of use of which are susceptible of being transferred, pursuant to article 37.

2 – The frequencies allocated to the Armed Forces and to security forces and services are excluded from the publicizing requirement referred to in the preceding paragraph.

Article 17

Numbering

1 – Suitable numbering resources shall be available for all publicly available electronic communications services.

2 – The NRA is charged with:

- a) Defining the guidelines and general principles of the National Numbering Plan;
- b) Managing the National Numbering Plan according to the principles of transparency, efficiency, equality and non-discrimination, including the establishment of conditions for the allocation and assignment of national numbering resources;
- c) Allocating numbering resources according to objective, transparent and non-discriminatory assigning procedures;
- d) Publishing the guidelines, general principles and principle components of the National Numbering Plan, as well as all subsequent additions or amendments thereto, allocation and retrieval procedures, which publication shall be subject only to limitations imposed on the grounds of national security;
- e) Ensuring that an undertaking which has been allocated a range of numbers does not discriminate against other providers of electronic communications services in respect of the number sequences used to allow access to their services;
- f) Supporting the harmonisation of numbering resources within the European Union where such is necessary to facilitating the development of pan European services, and coordinating its position with the other competent bodies of the Union in respect of international organisations and forums in which decisions are taken on issues relating to the numbering, where such is appropriate in order to ensure full global interoperability of services.^(*)

3 – The allocation of numbering resources to electronic communications services which are not publicly available, where this is necessary and without prejudice to the guarantee of availability of numbering resources for publicly available services pursuant to the preceding paragraphs.^(*)

4 – Entities responsible for the allocation of names and addresses of electronic communications networks and services shall coordinate their positions with the other relevant bodies of the European Union in international organisations and forums in which decisions are taken on these issues, where such is appropriate in order to ensure full global interoperability of services.^(*)

Article 18

Markets

The NRA is charged, under the terms of the present law, with defining and analysing the relevant markets, identifying undertakings with significant market power and determining suitable measures in respect of undertakings providing electronic communications networks and services.

TITLE III

Provision of electronic communications networks and services

CHAPTER I

General provisions

Article 19

Provision of networks and services

1 – The freedom to provide electronic communications networks and services is hereby ensured.

2 – Without prejudice to the preceding paragraph, the provision of electronic communications networks and services, whether publicly available or not, shall be subject only to the regime of general authorisation, which regime entails compliance with the rules set forth in the present law and respective regulations, and shall not be dependent on any prior decision or act of the NRA.

3 – The preceding paragraph does not apply in the cases where the use of frequencies and numbers depends on the allocation of individual usage rights, which allocations shall be made by the NRA in accordance with the terms of the present law.

4 – The nature of undertakings providing publicly available electronic communications networks and services shall be of a regularly constituted legal person.

5 – The instalment and functioning of the infrastructure of undertakings providing publicly available electronic communications networks and services shall be subject to the procedure established in articles 35 and 36 of Decree-Law no 555/99 of 16 December, as amended by Decree-Law no 177/2001 of 4 June, duly adapted, with the following exceptions:

a) The instalment and functioning of infrastructure subject to municipal authorisation in accordance with Decree-Law no 11/2003 of 18 January;

b) Public works which are necessary in situations where there is a threat to public health and safety, as well as public works for the repair of malfunctions.

6 – In the cases referred to in point b) of the preceding paragraph, the undertaking shall notify the municipal council on the working day following the execution of works.

7 – Within the period provided for in article 36 of Decree-Law no 555/99 of 16 December, as amended by Decree-Law no 177/2001 of 4 June, the municipal council may determine that the installation and functioning of infrastructure by said undertakings be postponed for a period not exceeding 30 days on grounds of planning and execution of works, which determination shall be made in writing and with due basis.

Article 20

Amendment of rights and obligations

1 – The conditions, rights and procedures applicable to the exercise of the activity, including the rights of use or rights to install facilities, may only be amended in cases of objective justification

and in accordance with the principle of proportionality, by means of law, regulation or administrative act, as appropriate.

2 – Amendments adopted pursuant to the preceding paragraph shall be subject to the general consultation procedure set forth in article 8, whereby interested parties, including users and consumers, shall be provided with a period of time that is sufficient to submit their views on the proposed amendments, which period shall be no less than 20 days, except in duly justified exceptional circumstances.

CHAPTER II

General regime of authorisation

Article 21

Procedure

1 – Undertakings which intend to provide electronic communications networks and services shall previously submit to the NRA a short description of the network or service they wish to initiate and shall give notice of the date upon which the activity is estimated to commence, submitting also such details as are necessary for their full identification under terms to be defined by the NRA.

2 – Without prejudice to other items required by the NRA pursuant to the final part of the preceding paragraph, undertakings shall provide notification of the respective address which is to be used for notifications and other communications to be carried out by the NRA, and also to provide notification of any alteration to said address within 30 days of such alteration.

3 – Undertakings referred to in paragraph 1 shall obtain proof of said notification, via any legally acknowledged receipt, including postal or electronic.

4 – Following said notification, undertakings may immediately commence activity, subject to the limitations resulting from the allocation of rights to use frequencies and numbers.

5 – The NRA shall, within 5 days of the receipt of said notification, issue a declaration confirming its delivery, which declaration shall describe in detail the rights provided for in the present law in respect of access and interconnection and of instalment of resources, which presentation is intended to facilitate the exercise of such rights.

6 – The provisions of the preceding paragraphs shall be applicable whenever there is any alteration to the elements previously submitted.

7 – Undertakings which cease the provision of electronic communication networks or services shall notify the NRA of such.

Article 22

Rights of undertakings that provide publicly available electronic communications networks and services

Undertakings which provide publicly available electronic communications networks and services enjoy the following rights:

a) To negotiate interconnection with and obtain access or interconnection from other providers of publicly available communications networks and services, under the conditions of and in accordance with the present law;

b) The opportunity to be designated as a provider of certain elements of universal service and/or to cover different parts of the national territory in accordance with the provisions of the present law.

Article 23

Rights of undertakings that provide electronic communications networks and services not available to the public

No restrictions may be imposed that prevent undertakings or operators from negotiating agreements among themselves in respect of technical and commercial modalities of access and interconnection.

Article 24

Rights of way

1 – Undertakings providing publicly available electronic communications networks and services are ensured:

a) The right to request, pursuant to general law, the expropriation and the constitution of public easements indispensable to the installation, protection and maintenance of the respective systems, equipment and further resources;

b) The right to use the public domain, in conditions of equality, for the implanting, crossing or passing over necessary for the installation of systems, equipment and further resources.

2 – Undertakings providing electronic communications networks and services not available to the public are ensured the right to request the use of the public domain as necessary for the installation of systems, equipment and further resources.

3 – The procedures for granting the rights referred to in the preceding paragraphs shall be transparent, duly published, and applied without discrimination and without delay, and the attached conditions to any such rights shall follow the principles of transparency and non-discrimination.^(*)

4 – All authorities with jurisdiction over the public domain shall set out and publish transparent, swift and non-discriminatory procedures governing the exercise of the right to use the public domain as ensured under the present law.

5 – There shall be a guarantee that the function responsible for granting or defining the conditions for the exercise of rights provided for in the present article shall have effective structural separation from activities associated with ownership or control of undertakings operating in the sector over which public authorities, including local authorities, retain ownership or control.

6 – The right granted for the use of the public domain under the terms of this article may not be extinguished prior to the expiry of the period for which such right was granted, except where justified and without prejudice to applicable provisions in respect of compensation.

Article 25

Co-location and facility sharing

1 – In the cases referred to in paragraph 1 of the preceding article, undertakings shall promote among themselves the conclusion of agreements aimed at sharing property or facilities, either installed or to be installed, which agreements shall be notified to the NRA.

2 – Where there are no viable alternatives to the installation of new infrastructure due to environmental protection, public health, public security, cultural heritage, country planning and town and country landscapes preservation, without prejudice to the powers of local authorities, the NRA may, following a consultation period of interested parties, determine the sharing of facilities, including ducts, masts and other installations in the property, whether or not the owners thereof are undertakings providing electronic communications networks and services.

3 – Determinations issued pursuant to the preceding paragraph may include rules for apportioning costs.

4 – In the event of sharing, the NRA may adopt measures that place restrictions on the operation of the facilities to be installed, namely a limit on the maximum levels of transmission power.

Article 26

Access to ducts

1 – The concessionaire of the telecommunications public service shall, by agreement, provide undertakings providing publicly available electronic communications networks and services with access to ducts, masts, other installations and property which it owns or manages, for the installation and maintenance of their systems, equipment and other facilities.

2 – The concessionaire of the telecommunications public service may request of undertakings providing publicly available electronic communications networks and services an appropriate remuneration for the use of ducts, masts, other installations and property which it owns or manages, in respect of the installation and maintenance of their systems, equipment and other facilities.

3 – In the absence of an agreement, any party may request the intervention of the NRA, and the NRA shall determine, by means of a substantiated decision, the conditions governing access, namely the price, which shall be cost-orientated.

4 – For the purposes of paragraph 1, the concessionaire shall make available an offer of access to ducts, masts, other installations and property, which offer shall include the conditions of access and usage, in accordance with terms to be established by the NRA.

5 – All entities under the tutelage, supervision or superintendence of bodies of the State, Autonomous Regions or local authorities which pursue administrative functions, whether or not commercial by nature, including public undertakings, majority public-owned undertakings, or

concessionaires, shall comply with the principle of non-discrimination in providing access to ducts, masts, other installations and property with they own or manage to undertakings providing publicly available electronic communications networks and services.

6 – The entities referred to in the preceding paragraph may request of undertakings providing publicly available electronic communications networks and services an appropriate remuneration in respect of the use of ducts, masts, other installations and property which they own or manage, for the installation and maintenance of systems, equipment and other facilities necessary to the activity pursued by said undertakings, in compliance, in the case of concessionaires, with the terms established in the respective concession contract.

7 – In the cases set forth in paragraphs 5 and 6, the act or contract by which said access is provided shall be subject to the approval of the body of tutelage, supervision or superintendence, following the prior opinion of the NRA.

Article 27

General conditions

1 – Without prejudice to other conditions provided for in general law, undertakings providing publicly available electronic communications networks and services may be subject in the exercise of their activity to the following conditions:

- a) Interoperability of services and interconnection of networks;
- b) Obligations of access that do not include the specific conditions set forth in article 28, but which may include, among others, rules in respect of the restrictions of provision;
- c) Maintenance of the integrity of the public network, particularly by means of conditions that prevent electromagnetic interference between electronic communications networks and/or services, pursuant to Decree-Law no 74/92 of 29 April and Decree-Law no 98/95 of 17 May, and respective regulatory measures;
- d) Conditions of use during major disasters which shall ensure communications between emergency services and authorities and broadcasts to the general public;
- e) Security of public networks against unauthorised access according to legislation governing personal data and privacy protection in respect of electronic communications;
- f) Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing, including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works;
- g) Personal data and privacy protection with specific respect to electronic communications, in accordance with legislation governing personal data and privacy protection;
- h) Conditions for the use of frequencies, in accordance with Decree-Law no 151-A/2000 of 20 July, where such use is not made subject to the granting of individual rights of use in accordance with article 16;
- i) Accessibility of numbers from the national numbering plan to end-users including conditions, in accordance with the present law;

- j) Consumer protection rules specific to the electronic communications sector including conditions in accordance with the present law;
- l) Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with applicable law;
- m) Measures designed to ensure compliance with the standards and/or specifications referred to in article 29;
- n) Installation, at the undertaking's own expense, and provision of systems of legal interception to competent national authorities, as well as the supply of means of decryption or decoding where these facilities are present, in accordance with legislation governing personal data and privacy protection within the scope of electronic communications;
- o) "Must carry" obligations in accordance with article 43;
- p) Restrictions on the transmission of illegal content, in accordance with legislation that transposes Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, and on the transmission of harmful content, in accordance with Law no 38-A/98, of 14 July;
- q) Financial contributions to the funding of the universal service in accordance with articles 95 to 97;
- r) Fees, in accordance with article 105;
- s) Information to be provided under the procedure of notification set out in article 21 and for the purposes set forth in article 109.

2 –The NRA shall specify which conditions, among those referred to in the preceding paragraph, shall apply to electronic communications networks and services, for which purpose it may establish categories.

3 – The conditions to be defined by the NRA under the terms of the preceding paragraph shall be objectively justified in respect of the network or service under consideration, particularly in respect of its availability to the public, and shall be non-discriminatory, proportionate and transparent.

4 – For the purposes of paragraph 2 of the present article, the compulsory prior opinion of sector regulators shall be sought, in matters within their remit, which opinion shall be issued within a period not exceeding 15 days.

Article 28

Specific conditions

The definition of conditions pursuant to the preceding article is without prejudice to the imposition on undertakings providing electronic communications networks and services of specific obligations in accordance with the rules and in the situations set forth in the present law:

- a) In respect of access and interconnection, under the terms of paragraph 1 of article 63 and articles 66, 73, 77 and 78;
- b) In respect of other of regulatory controls, under the terms of articles 82 to 85;
- c) In respect of universal service, regarding the respective providers;
- d) Resulting from the maintenance of obligations, under the terms of article 122.

Article 29

Standardisation

1 – Without prejudice to rules deemed mandatory at the level of the European Union, the NRA, to the extent strictly necessary to ensure interoperability of services and to broaden freedom of choice for users, shall encourage the use of standards and specifications, in order to encourage the harmonised provision of electronic communications networks and services and associated facilities and services; such standards and specifications shall be based on the list drawn up by the European Commission and published in the Official Journal of the European Communities, pursuant to Directive no 2002/21/EC of the European Parliament and of the Council of 7 March 2002.

2 – The NRA shall promote the publication in the *Diário da República* of the reference to the publication in the Official Journal of the European Communities of the list of standards and specifications regarding the harmonised provision of electronic communications networks and services and associated facilities and services referred to in the final part of the preceding paragraph.

3 – While the list referred to in paragraph 1 has not been published, the NRA shall encourage the implementation of standards and specifications adopted by the European standards organisations.

4 – In the absence of the standards referred to in the preceding paragraph, the NRA shall encourage the implementation of international standards or recommendations which have been adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).

5 – Without prejudice to the standards and specifications referred to in the preceding paragraphs, technical specifications may be implemented at national level.

6 – The competent national authorities shall encourage the European standards organisations to use international standards where such standards exist, or the relevant parts thereof, as a basis for the standards they develop, except where such standards or parts thereof would be ineffective.

CHAPTER III

Rights of use

Article 30

Frequency usage rights

1 – The use of frequencies shall be subject to the granting of individual rights of use only where this is so provided for in the NFAP, pursuant to point b) of paragraph 1 of article 16.

2 – Frequencies usage rights may be granted to both providers of electronic communication networks or services and to entities that use such networks or services, including providers of radio or television content broadcasting services, under the terms of applicable legislation.

3 – Without prejudice to specific criteria and procedures for the granting of frequency usage rights to providers of radio or television content broadcasting services, such usage rights shall in pursuit of general interest objectives, be granted by means of procedures which are open, transparent and non-discriminatory.

Article 31

Limitation of the number of rights of use for frequencies

1 – The number of usage rights to be granted may only be limited in the event that such limitation is necessary to ensure the efficient use of radio frequencies.

2 – Where the NRA intends to limit the number of usage rights to be granted, it shall, in particular, give due weight to the need to maximise benefits for users and to facilitate the development of competition.

3 – In the cases provided for in the preceding paragraph and without prejudice to other measures deemed appropriate, the NRA shall:

- a) Enact the general consultation procedure set forth in article 8, hearing, in particular users and consumers;
- b) Publish a decision to limit the granting of usage rights, stating the reasons therefor, establishing at the same time the procedure for allocation, which procedure may consist of competitive or comparative selection, including an auction or competition.
- c) Instigate the procedure for the presentation of applications for the usage rights under the terms defined.

4 – Where the granting of frequency usage rights is limited, the procedures and selection criteria shall be objective, transparent, non-discriminatory and proportionate and shall take account of the objectives set forth in article 5.

5 – The NRA shall conduct a review of the limitation of the number of frequency usage rights under the terms of 16, on an annual basis and also at the reasonable request of interested undertakings; where the NRA concludes that further frequency usage rights may be granted, it shall publish such conclusion and instigate the procedures for the applications for such rights, in accordance with the present article.

Article 32

Conditions attached to frequency usage rights

1 – Without prejudice to other conditions resulting from general law and to those set out in paragraph 1 of article 27, frequency usage rights shall only be subject to the following conditions:

- a) Designation of service or type of network or technology for which the frequency usage rights have been granted, including, where applicable, the exclusive use of a frequency for the transmission of specific content or specific audiovisual services;
- b) Effective and efficient use of frequencies in accordance with article 15, including, where appropriate, requirements of coverage;

- c) Technical and operational conditions necessary to ensure that harmful interference is not produced and to limit exposure of the general public to electromagnetic fields, where such conditions are different from those included in point l) of paragraph 1 of article 27;
 - d) Maximum duration in accordance with Article 36, subject to any changes made to the NFAP;
 - e) Transfer of rights at the initiative of the right holder and conditions for such transfer in accordance with article 37;
 - f) Fees, in accordance with Article 105;
 - g) Possible commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure;
 - h) Obligations under relevant international agreements relating to the use of frequencies.
- 2 – The regime set out in paragraphs 2 and 3 of article 27 is applicable to the conditions of frequency usage rights.

Article 33

Rights of use for numbers

- 1 – The use of numbers shall be dependent on the granting of individual rights of use.
- 2 – The rights of use for numbers may be granted to providers of electronic communication networks or services or to entities that use such networks or services.
- 3 – The rights of use for numbers shall be granted by means of procedures which are open, transparent and non-discriminatory.
- 4 – Without prejudice to the provisions of the preceding paragraph, the NRA may, following the general consultation procedure set out in article 8, decide that rights of use for numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, including by tender or auction, and shall identify them in accordance with point d) of paragraph 2 of article 17.

Article 34

Conditions attached to rights of use for numbers

- 1 – Without prejudice to other conditions resulting from general law and to those set forth in paragraph 1 of article 27, the rights of use for numbers may be subject to the following conditions:
- a) Designation of the service for which the number shall be used, including any requirements linked to the provision of said service;
 - b) Effective and efficient use of numbers in accordance with point b) of paragraph 2 of article 17;
 - c) Requirements of number portability in accordance with article 54;
 - d) Obligations in respect of directory services for the purposes of articles 50 and 89;
 - e) Transfer of rights at the initiative of the right holder and conditions for such transfer in accordance with article 38;
 - f) Fees, in accordance with article 105;

g) Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure;

h) Obligations arising from applicable international agreements on the use of numbers.

2 – The provisions set out in paragraphs 2 and 3 of article 27 are applicable to the rights of use for numbers.

Article 35

Grant of rights of use

1 – The allocation of usage rights for frequencies and numbers is dependent on a request being submitted to the NRA, which request shall include such items as are necessary to prove the ability of the requestor to comply with the conditions associated with the usage right, which conditions are established in articles 32 and 34, under terms to be defined by the NRA.

2 – The decision on the allocation of usage rights shall be taken, notified and made public within the following periods:

a) within a period not exceeding 15 days in the case of numbers that have been allocated for specific purposes within the National Numbering Plan;

b) within a period not exceeding 30 days in the case of frequencies that have been allocated for specific purposes within the NFAP, without prejudice to any applicable international agreements on the use of radio frequencies or of orbital positions.

3 – Where the granting of rights of use is subject to competitive or comparative selection procedures, the periods set out in the preceding paragraph may be extended as follows:

a) to an additional period of 15 days, in respect of the allocation of numbers;

b) for as long as is necessary in respect of the allocation of frequencies, to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no more than eight months, without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.

4 – The Government is charged with the approval of regulations regarding the allocation of frequency usage rights where such regulations involve competitive or comparative selection procedures, and where such allocation involves frequencies which are being made available for the first time within electronic communications, or otherwise where such frequencies are intended to be used for new services.

5 – The NRA is charged with the approval of regulations regarding the allocation of rights of use for frequencies in cases not covered in the preceding paragraph.

6 – In the event that the use of frequencies has been harmonised, that conditions and procedures of access have been agreed, and that selection has been made of the undertakings to which the frequencies shall be assigned, in accordance with international agreements and Community rules, the NRA shall grant the right of use for such radio frequencies in accordance therewith, and provided that all national conditions attached to the right to use such frequencies have been satisfied, in the case of a common selection procedure, no further conditions, additional criteria or

procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio frequencies may be imposed.

Article 36

Time limit and renewal of rights of use for frequencies

1 – Frequency usage rights shall be granted for a 15-year period, and in duly substantiated situations they may be granted by the NRA for an extended time limit, to a maximum of 20 years.

2 – The rights of use may be renewed for equal periods of time, upon a request submitted by the right holder to the NRA at the least one year prior to the termination of the period in which the right is in force.

3 – In the case referred to in the preceding paragraph, the NRA may oppose the renewal of the right of use up to three months before the termination of the period in which the right is in force, presenting the grounds therefor; in the event that the NRA does not respond, the request shall be deemed as granted.

Article 37

Transfer of rights of use for frequencies

1 – Where identified as such in the NFAP, frequency usage rights are transferable.

2 – For the purposes of the preceding paragraph, the holders of rights of use shall previously notify the NRA of their intention to transfer such rights, as well as the conditions under which they intend such transfer to be made.

3 – In the event that frequency usage rights are transferred, the NRA is charged with ensuring that:

a) The transfer does not cause a distortion of competition;

b) The frequencies are used effectively and efficiently;

c) The intended use of the frequency is respected where such use has been harmonised through the application of Decision no 676/2002/EC (Radio Spectrum Decision) or other Community measures;

d) The restrictions set forth in the law in respect of radio and television broadcasting are safeguarded.

4 – The NRA shall respond to the notification provided for in paragraph 2 within a period not exceeding 45 days. The NRA may oppose the intended transfer of usage rights and may also impose such conditions as may be necessary to comply with the provisions of the preceding paragraph, which decision shall have due basis.

5 – In the cases provided for in the preceding paragraph, the NRA shall request the prior opinion of the Competition Authority, which opinion shall be issued within a period not exceeding 10 days following the date of such request.

6 – The transfer of rights does not suspend nor interrupt the time limit for which the rights of use have been granted pursuant to this law, without prejudice to the renovation thereof, pursuant to paragraph 2 of article 36.

Article 38

Transfer of rights of use of numbers

The rights of use of numbers may be transferred under terms and conditions to be established by the NRA, which terms and conditions shall provide mechanisms intended to safeguard, in particular, the effective and efficient use of numbers and rights of users.

CHAPTER IV

Operation rules

SECTION I

Undertakings providing publicly available networks and services

Article 39

Protection of users and subscribers

1 – The following rights are conferred upon users of publicly available networks and services, in addition to others resulting from the law:

- a) Equal access to provided networks and services;
- b) To be provided, in a timely manner and prior to the conclusion of any contract, with written information in respect of the conditions governing access to and use of the service;
- c) To be given a minimum of 15 days notice in the event of the termination of provision.

2 – The following rights are granted to subscribers of publicly available networks and services, in addition to others resulting from the law:

- a) To be given notice, of appropriate duration, of the suspension of the service provision, in the event of non-payment of bills;
- b) To receive itemised bills, where requested.

3 – The information mentioned in point c) of paragraph 1 shall be likewise notified to the NRA within the same period of time.

4 – Undertakings providing publicly available electronic communications networks and services shall submit the respective subscription contracts to the NRA, who is charged with the approval of such contracts and who shall report on their compliance with the present law, following the prior opinion of the Consumer Institute, to be issued within 20 days.

5 – If, pursuant to the preceding paragraph, the NRA does not present its decision within 90 days, the submitted accession contract is deemed approved.

Article 40

Quality of service

1 – Undertakings which provide publicly available electronic communications services shall publish and provide end-users with information on the quality of their services, which information shall be comparable, clear, complete and up-to-date.

2 – For the purposes of the preceding paragraph, the NRA shall, following the general consultation procedure referred to in article 8, specify, *inter alia*, the quality of service parameters to be measured and the content, form and manner of information to be published, for which purpose the annex may be followed.

3 – Undertakings shall also provide the NRA with regular and up-to-date information on the quality of their services, in accordance with article 108.

Article 41

Accounting separation

1 – Undertakings providing public communications networks or publicly available electronic communications services which enjoy special or exclusive rights for the provision of services in other sectors in the same or another Member State, shall provide a separate system of accounting for activities connected to the provision of electronic communications networks and services, which system shall be subject to an independent audit to be carried out by a body appointed by the NRA or accepted by it; otherwise such undertakings shall create different legal entities for the corresponding activities.

2 – Undertakings with an annual turnover which is less than EUR 50 million may be exempted by the NRA from the obligations provided for in the preceding paragraph.

3 – Undertakings providing publicly available electronic communications networks and services which, under the terms of specific legislation applicable to them, are not subject to an accounting control, shall, on an annual basis, draw up the respective financial reports, which reports shall be submitted to an independent audit and published.

Article 42

Structural separation and other measures

1 – Undertakings providing public electronic communications networks shall operate their cable television network through legally independent bodies where:

a) They are controlled by a Member State or enjoy special rights;

b) They have a dominant position in a substantial part of the market in respect of the provision of public electronic communications networks and of publicly available telephone services;

c) They operate a cable television network created with the enjoyment of special or exclusive rights in the same geographic area.

2 – For the purposes of point b) of the preceding paragraph, publicly available telephone services shall mean services provided for the commercial provision of direct transport of real-time speech

via the public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location to communicate with another user of equipment connected to another termination point.

3 – Public undertakings which established their networks with the enjoyment of special or exclusive rights, which are vertically integrated and which have a dominant position shall be subject to the appropriate measures of the NRA, as are suitable in order to ensure the principle of non-discrimination.⁽¹⁾

Article 43

«Must carry» obligations

1 –The NRA shall impose “must carry” obligations upon undertakings providing electronic communications networks used for the distribution of radio or television broadcasts where such networks are used by a significant number of end-users as the principal means of receiving radio and television broadcasts, which obligations shall be to transmit radio and television broadcast channels and services as specified under law by competent authorities.

2 – The obligations set out in the preceding paragraph shall be imposed only where they are necessary to meet clearly defined objectives of general interest and shall be reasonable, proportionate, transparent and subject to periodical review.

3 – The NRA may determine appropriate remuneration in respect of imposed “must carry” obligations, which remuneration shall be applied in a proportionate and transparent manner, while ensuring that, in equivalent circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks.

Article 44

Non-geographic numbers

1 – Where technically and economically feasible, and without prejudice to the provision of the following paragraph, undertakings holding non-geographic numbers within the national territory shall ensure that end-users from the European Union have access to such numbers.

2 – The provision of the preceding paragraph shall not apply where a called subscriber has, for commercial reasons, chosen to limit the access of calls from specific geographical areas.

3 – The prices applicable to calls for non-geographic numbers may be differentiated according to whether such calls originate from within or from outside the national territory.

Article 45

Barring of audio-text services

1 – Undertakings providing electronic communications networks and services which support the provision of audio-text services shall ensure, as a rule, that access to such services is barred without charge, and such services may only be activated, generally or selectively, following a written request on the part of the respective users.

2 – The preceding paragraph does not apply to televote audio-text services, access to which is granted automatically to the user.

Article 46

Contract prevention mechanisms

1 – Undertakings providing electronic communications networks and services are entitled by this law, directly or through their representative associations, to establish and manage mechanisms that enable the identification of subscribers who have failed to meet their payment obligations in respect of concluded contracts, which mechanisms shall include the establishment of a shared database.

2 – The database management body shall set out the respective conditions of operation, requesting the prior opinion of the NRA, and submit these conditions to the Comissão Nacional de Protecção de Dados (National Commission for Data Protection) for approval.

3 – The established mechanisms shall respect the following conditions, without prejudice to the applicable regime on protection of personal data and privacy:

a) The included data shall be restricted to those items that are absolutely necessary for the identification of non-compliant subscribers;

b) Guarantee of the right to access, rectify and update data by the respective holder;

c) Obligation to include in contracts or to expressly advise subscribers who have already concluded a contract that their data may be entered in the database in the event of non-compliance with contractual obligations, in addition to the obligation of informing subscribers, within 5 days, of the inclusion of their data in the database;

d) Undertakings wishing to gain access to items included shall likewise provide the necessary items in respect of contracts which they have concluded and in respect of which there are sums overdue.

e) All items received shall be used exclusively by those undertakings participating in the established mechanisms, and the full or partial transmission of such items to third parties or the use of such items for purposes other than those which are set out in the preceding paragraph is prohibited;

f) Following the settlement of sums due by a subscriber, all items in respect of such subscriber shall be removed forthwith;

g) The guarantee of the right of subscribers to compensation, pursuant to general law, in the event that their data is unduly included the established mechanisms.

4 – The operating conditions of the database shall ensure compliance with the provisions of the preceding paragraph and shall consist, in particular, of:

a) The minimum overdue amount which shall cause the subscriber to be included in the database, which amount shall not be less than the national minimum wage;

b) Identification of situations of non-compliance which may be entered in the database, possibly making a distinction between categories of subscribers in view the sums overdue;

- c) Establishment of a period of delay following which inclusion in the database is permitted;
- d) Identification of data which may be included;
- e) Maximum period which data may remain in the database.

5 – Undertakings providing electronic communications networks and services may refuse to conclude a contract with a subscriber who has not settled overdue amounts in respect of previously concluded contracts with the same or another undertaking, except where the subscriber concerned has cited breach of contract, or has complained against or appealed the presented bill.

6 – The regime set forth in the preceding paragraph shall not apply to the universal service providers, which providers may not refuse to enter into a contract, without prejudice to their right to demand the provision of guarantees.

SECTION II

Undertakings providing publicly available telephone networks and services

Article 47

Obligation to publish information

1 – Undertakings providing publicly available telephone networks and services shall make available to the public, and especially to all consumers, information on applicable prices and on standard terms and conditions, in respect of access to and use of publicly available telephone services, which information shall be transparent and up-to-date.

2 – For the purposes of the preceding paragraph, such undertakings shall publish and provide the following information in a form defined by the NRA:

- a) Identification of the provider;
- b) Scope of the publicly available telephone service, in particular the description of the services offered, the indication of what is included in the subscription charge, where this charge exists, and the periodic rental charge, including operator services, directories, directory enquiry services, selective call barring, itemised billing and maintenance;
- c) Standard prices which shall cover access and all types of charges in respect of use, maintenance, as well as details of the standard discounts applied and special or specific tariff schemes;
- d) Compensation or refund systems, including specific details on the respective schemes, where offered;
- e) Types of maintenance service offered;
- f) Standard contract conditions, including any minimum contractual period;
- g) Mechanisms for the settlement of disputes including those mechanisms developed by the undertaking providing the service.

3 – Undertakings obliged under the terms of paragraph 1 to publish and make available the information referred to in the preceding paragraph, shall communicate such information to the NRA.

Article 48

Contracts

1 – Without prejudice to rules on consumer protection, services providing connection and/or access to the public telephone network shall be subject to a contract that shall compulsorily specify the following:

- a) The identity and address of the supplier;
- b) Services provided, the levels of service quality offered, and the time necessary for the initial connection;
- c) The types of maintenance service offered;
- d) Details of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- e) The duration of the contract and the conditions whereby the contract or services may be renewed, suspended or terminated;
- f) Any compensation and the refund arrangements which apply if contracted levels of service quality are not met;
- g) The method whereby dispute settlement procedures may be instigated in accordance with article 107;
- h) Conditions for the provision of itemised bills;
- i) Explicit indication of the subscriber's willingness in respect of the inclusion or not of their respective personal information in a public directory and on its disclosure through the directory enquiry service, whether or not the transfer thereof to third parties is involved, pursuant to legislation on protection of personal data.

2 – The provisions of the preceding paragraph shall also apply to contracts concluded between consumers and undertakings providing electronic communications services other than those providing connection or access to the public telephone network.

3 – Where the undertaking decides to amend the contractual conditions referred to in paragraph 1, it shall give prior notice of not less than one month to subscribers, in appropriate form, and at the same time inform subscribers of their right to withdraw, without penalty, from such contracts, in the event that they do not accept the new conditions, within the time limit set out in the contract.

Article 49

Integrity of the network

1 – Undertakings providing publicly available telephone services at fixed locations shall ensure the integrity of the respective networks.

2 – Undertakings providing public telephone network and publicly available telephone services at fixed locations shall ensure the availability of networks and services in the event of emergency or in cases of force majeure.

3 – Undertakings providing publicly available telephone services shall ensure uninterrupted access to emergency services.

Article 50

Directory enquiry services and operator assistance services

1 – Subscribers to publicly available telephone services have the right to inclusion in the comprehensive publicly available directory referred to in point a) of paragraph 1 of article 89.

2 – End-users provided with a connection to public telephone networks have the right of access to directory enquiry services, in accordance with point c) of paragraph 1 of article 89, and to services with operator assistance.

3 – Regulatory restrictions that prevent end-users in one Member State from directly accessing the directory enquiry services in another Member State may not be imposed.

4 – Undertakings which assign telephone numbers to subscribers shall meet all reasonable requests for the supply of the relevant information on the respective subscribers for the purposes of the provision of publicly available directory enquiry services and directories, in an agreed format and on terms which are fair, objective, cost oriented and non-discriminatory.

5 – The provisions of this article are subject to the rules applicable to the protection of personal data and privacy.

Article 51

Single European emergency call number

1 – End-users of publicly available telephone services, including users of public pay telephones, have the right to access the emergency services free of charge, by using the single European emergency call number - “112”, duly identified as such in the National Numbering Plan.

2 – As far as is technically feasible, undertakings providing publicly available telephone networks and services shall make information on the location of the caller available to authorities handling emergencies, for all calls to the single European emergency call number “112”.

3 – Without prejudice to the preceding paragraphs, the NRA may assign other specific emergency numbers, duly identified as such in the National Numbering Plan.

Article 52

Suspension or termination of services

1 – Undertakings providing publicly available telephone services shall only suspend the provision of services in the event of non-payment of bills, following an appropriate due warning of eight days given to the subscriber.

2 – In the cases provided for in the preceding paragraph, the subscriber is entitled to pay and settle only part of the sums due according to the bill, and any service interruption shall be limited to the service concerned, as far as such limitation is technically feasible, except in cases of fraud or of persistent late or non-payment.

3 – During the period of suspension and up to the termination of service, the subscriber is entitled to make calls that do not incur a charge, such as those made to the single European emergency call number.

4 – The service may be terminated only after an appropriate warning of eight days has been issued to the subscriber.

Article 53

Provision of additional facilities

1 – Undertakings providing publicly available telephone networks and services shall make available to end-users, subject to technical feasibility and economic viability, the following facilities:

a) Multi-frequency dialling – DTMF, ensuring that the public telephone network supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network;

b) Calling-line identification, in accordance with relevant legislation on protection of personal data and privacy, in particular those specifically applicable in respect of electronic communications.

2 – The NRA shall, following the general consultation procedure provided for in article 8, waive the need to comply with the provision of the preceding paragraph, in all or part of the national territory, where the NRA considers that there is sufficient access to the facilities mentioned therein.

Article 54

Number portability

1 – Without prejudice to other forms of portability that may be determined, all subscribers of publicly available telephone services who so request are entitled to retain their number or numbers, in respect of the same service, irrespective of the undertaking providing the service, in the case of geographic numbers, at a specific location, and in the case of the remaining numbers, throughout national territory.

2 – The interconnection prices in respect of the provision of number portability shall follow the principle of cost orientation and direct charges to subscribers, if any, and shall not act as a disincentive for the use of such facilities.

3 – The NRA is charged with ensuring that undertakings provide subscribers with appropriate and transparent information on the prices applicable to portability operations and to calls made to ported numbers.

4 – The NRA shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.

5 – The NRA is charged with determining the rules necessary for the performance of portability, following the general consultation procedure provided for in article 8.

TITLE IV

Market analysis and regulatory control

CHAPTER I

Market analysis procedure and imposition of obligations

Article 55

Scope and general principles

1 – The present title applies to undertakings providing publicly available networks and services.

2 – Market analysis and the imposition of specific regulatory obligations shall comply with the principles of full reasoning for the application of specific regulatory obligations.

3 – In establishing the grounds for decisions to apply specific regulatory obligations, the NRA shall cumulatively prove that the imposed obligation:

- a) Is appropriate to the identified problem, and is proportional and justified in the light of the basic objectives set forth in article 5 of the present law;
- b) Is objectively justified in respect of the networks, services or infrastructure to which it refers;
- c) Does not result in undue discrimination in respect of any other entity;
- d) Is transparent in regard to its purposes.

Article 56

Assignment

The NRA is charged, according to the rules provided for in this article, with:

- a) Identifying the relevant markets of products and services, having regard to the recommendation of the European Community issued pursuant to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002, hereinafter referred to as the recommendation of the European Commission, as well as other relevant markets not mentioned therein;
- b) Determining whether or not a relevant market is effectively competitive;
- c) Declaring undertakings with significant market power in the relevant markets;
- d) Imposing, maintaining, amending or withdrawing obligations in respect of undertakings with or without significant market power, including the imposition of technical and operational conditions on the provider and/or beneficiaries of access.

Article 57

Specific consultation procedure

1 – Where the decisions to be adopted pursuant to the preceding article affect trade between Member States, the NRA, in addition to the general consultation procedure laid down in article 8, shall comply with the following procedure, which has the intention of consolidating the internal market:

a) Make, by suitable means, the substantiated draft decision measure accessible to the European Commission and to the national regulatory authorities of other Member States, indicating any confidential information therein;

b) Notify the European Commission and other national regulatory authorities of the available draft measure and the means by which access to it may be gained.

2 – The European Commission and national regulatory authorities may comment on the draft measure within a period of one month, which period may not be extended, or within the period set out for the general consultation procedure, whichever period is longer.

3 – The NRA may, in the absence of comments received or following the analysis of comments received, which comments shall be taken into account, adopt the draft measure and notify the European Commission thereof.

4 – The final part of the preceding paragraph does not apply to draft measures of the NRA which concern the following issues, where any of the conditions referred to in paragraph 5 apply:

a) The identification of relevant markets that differ from those defined in the recommendation of the European Commission;

b) Decision on whether or not to designate an undertaking as having individual or joint significant market power.

5 – Where a draft measure on the issues referred to in the preceding paragraph is under consideration and where the European Commission, in the scope of the procedure laid down in paragraph 2, has indicated that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law, in particular with the objectives referred to in article 5, and in the event that the European Commission, within a period of two months which period may not be extended, and according to the procedure provided for in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002, takes a substantiated decision requiring the NRA to withdraw the draft measure, the NRA shall accordingly withdraw the draft measure and present specific proposals for amending the draft measure.

6 – Where the European Commission does not issue an assessment within the two-month period referred to in the preceding paragraph, the NRA may adopt the decision.

CHAPTER II

Market definition and analysis

Article 58

Market definition

1 – The NRA is charged with defining the relevant markets of products and services within the electronic communications sector, including the relevant geographic markets, in accordance with the principles of competition law.

2 – In the course of market definition, the NRA, having regard to normal circumstances, shall take due account of the recommendation of the European Community that identifies, in accordance with the principles of competition law, the relevant product and service markets, the characteristics of which may be such as to justify the imposition of specific regulatory obligations and shall also take due account of the “Guidelines for market analysis and assessment of significant market power”, hereinafter referred to as the guidelines.

3 – The NRA may define markets that differ from those mentioned in the recommendation of the European Community, following the procedure referred to in article 57.

4 – The market definition may be reviewed in the event that the recommendation of the European Community is amended or where the NRA deems that there are grounds for such a review.

Article 59

Market analysis

1 – The NRA is charged with carrying out an analysis of the relevant markets defined pursuant to the preceding article, taking account of the guidelines.

2 – Within the scope of market analysis, the NRA shall determine whether or not a relevant market is effectively competitive, for the purposes of imposing, maintaining, amending or suppressing obligations set forth in the present title.

3 – Where the NRA concludes that the market is effectively competitive, it shall not impose any specific regulatory obligation and it shall remove any existing obligations, giving an appropriate period of notice to parties affected by such removal.

4 – Where the NRA determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power in that market and impose appropriate and specific regulatory obligations, or maintain or amend such obligations where they already exist.

5 – Where the NRA identifies transnational markets, by means of a decision taken pursuant to Directive no 2002/21/EC of the European Parliament and of the Council of 7 March 2002, the NRA shall, jointly with the other national regulatory authorities concerned, conduct an analysis of the market or markets concerned, taking account of the guidelines, in order to formulate a position in respect of on any imposition, maintenance, amendment or withdrawal of obligations provided for in this title.

6 – The analysis of the market shall be reviewed in the event that a new definition of the markets is established or where NRA deems that there are grounds for such a review.

Article 60

Significant market power

1 – For the purposes of the present law, an undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and consumers.

2 – The NRA, when assessing whether two or more undertakings have a joint dominant position in a market, shall act in accordance with Community law and take the guidelines into account.

3 – The NRA may consider that two or more undertakings are in a joint dominant position if, even in the absence of structural or other links between them, they operate in a market whose structure is considered to be conducive to coordinated effects.

4 – Without prejudice to the case law of the Court of Justice on joint dominance, the NRA shall, in its assessment, use criteria based on specific market characteristics, in particular in terms of market concentration and transparency, giving weight, in particular, to the following factors:

- a) Fully developed market;
- b) Stagnant or moderate growth on the demand side;
- c) Low elasticity of demand;
- d) Homogeneous product;
- e) Similar cost structures;
- f) Similar market shares;
- g) Lack of technical innovation or fully developed technology;
- h) Absence of excess capacity;
- i) High barriers to entry;
- j) Lack of countervailing buying power;
- l) Lack of potential competition;
- m) Various kinds of informal or other links between the undertakings concerned;
- n) Retaliatory mechanisms;
- o) Lack or reduced scope for price competition.

5 – Where an undertaking has significant market power in a specific market, it may also be deemed to have significant market power in an adjacent market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

Article 61

Cooperation with the Competition Authority

The draft measures of the NRA in respect of the analysis of the market and the determination of whether or not an undertaking holds significant market power are subject to the prior opinion of the Competition Authority, with opinion shall be issued within 30 days of the respective request.

CHAPTER III

Access and interconnection

SECTION I

General provisions

Article 62

Freedom of negotiation

Undertakings providing electronic communications networks and services are entitled to negotiate and agree between themselves technical and commercial arrangements for access and interconnection, without prejudice to the competence of the NRA provided for in the present chapter.

Article 63

Competence of the national regulatory authority

1 – In exercising the powers set out in the present chapter, the NRA shall, acting in pursuit of the regulatory objectives set out in article 5, encourage and, where appropriate, ensure suitable access and interconnection, as well as interoperability of services, aiming at promoting efficiency and sustainable competition, and at providing maximum benefit to end-users.

2 – The NRA is charged with:

- a) Imposing obligations in matters of access and interconnection on undertakings providing electronic communications networks and services;
- b) Intervening upon its own initiative whenever justified or, in the absence of an agreement between undertakings, at the request of either of the parties involved pursuant to articles 10 and 12, in order to secure the objectives established in article 5, in accordance with the provisions of the present law.

3 – Operators shall comply with obligations in the form, way and period to be determined by the NRA.

Article 64

Access and interconnection conditions

1 – The terms and conditions of access and interconnection provision shall be consistent with obligations imposed by the NRA in such respect.

2 – Operators shall have a right and, when requested by other undertakings, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services.

3 – Traffic shall remain the property of the undertaking operating the network or providing the service where the traffic is originated, unless otherwise agreed, and the respective conveyance, as well as the delivery point, may be freely negotiated between the parties.

4 – In the case of transnational agreements, the undertaking requesting access or interconnection does need to be covered by the general authorisation laid down in the present law, provided that it does not provide electronic communications networks and services within the national territory.

Article 65

Confidentiality

1 – Undertakings shall respect the confidentiality of information received, transmitted or stored, before, during or after the process of negotiating and making agreement in respect of access or interconnection, and shall use that information solely for the purpose for which it was supplied.

2 – The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could constitute a competitive advantage.

3 – The provision of the preceding paragraphs does not prejudice the exercise of the supervisory and monitoring powers of the NRA, particularly in respect of information requested pursuant to article 108.

SECTION II

Obligations applicable to undertakings with significant market power

Article 66

Imposition, maintenance, amendment or withdrawal of obligations

1 – The NRA is charged with determining the imposition, maintenance, amendment or withdrawal of the following obligations, in respect of access or interconnection applicable to undertakings designated as having significant market power:

a) Obligation of transparency in relation to the publication of information, including reference offers, pursuant to articles 67 to 69;

b) Obligation of non-discrimination, in relation to the provision of access and interconnection and the respective provision of information, pursuant to article 70;

c) Obligation for accounting separation in respect of specific activities related to access and interconnection, pursuant to article 71;

d) Obligation to respond to reasonable requests for access, pursuant to article 72;

e) Obligation of price control and cost accounting, pursuant to article 74 to 76;

2 – For the purposes of the preceding paragraph, the NRA shall impose the appropriate obligations, having regard to the nature of the problem identified, which obligations shall be proportionate and justified according to the objectives set out in article 5.

3 – The obligations set out in paragraph 1 shall not be imposed on undertakings which have not been designated as having significant market power, except in the cases laid down in the present law or where such imposition is necessary to comply with international commitments.

4 – In exceptional circumstances and where appropriate, the NRA may impose obligations other than those set out in paragraph 1 on operators with significant market power, subject to the prior authorisation of the European Commission, pursuant to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002, for which a draft measure shall be previously submitted to the European Commission.

Article 67

Obligation of transparency

1 – The obligation of transparency consists of the requirement to publish appropriate information in respect of the provision of access and interconnection by an operator, including accounting information, technical specifications, network characteristics and terms and conditions for supply and use, including prices.

2 – For the purposes of the preceding paragraph, the NRA is charged with specifying the information to be published, and the form and manner of its publication.

Article 68

Reference offer

1 – The NRA may, on a case by case basis, determine, in particular to operators which have obligations of non-discrimination, that access or interconnection reference offers be published, which offers shall:

a) Be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested;

b) Give a description of the relevant offerings broken down into components according to market needs;

c) Give a description of the associated terms and conditions, including prices.

2 – For the purposes of the preceding paragraph, the NRA may determine the components which as a minimum shall be included in the reference offers, specifying the precise information to be made available, the level of detail required and the manner of publication.

3 – The NRA may further determine:

- a) Changes to published reference offers, at any time and where necessary with retroactive effect, to give effect to obligations imposed under the provision of article 66;
- b) The immediate inclusion of the imposed changes in the agreements concluded, provided that such changes have specific and sufficient content.

Article 69

Reference offer for access to the local loop (ROALL)

1 – Where an operator is subject to the obligation to offer unbundled access to the local loop, it shall publish the respective reference offer for access to the local loop (ROALL) including as a minimum the following list of components, without prejudice to the provision of paragraph 2 of the preceding paragraph:

- a) Conditions for unbundled access to the local loop;
- b) Co-location;
- c) Information systems;
- d) Supply conditions.

2 – For the purposes of point a) of paragraph 1, the following items shall be specified:

- a) Network components to which access is offered, covering in particular access to local loops and access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
- b) Information concerning the location of physical access sites, the availability of which may be restricted to interested parties, in order to avoid public security concerns, as well as availability of local loops in specific parts of the access network;
- c) Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
- d) Ordering and provisioning procedures and usage restrictions.

3 – For the purposes of point b) of paragraph 1, the following items shall be specified:

- a) Information on the notified operator's relevant sites, the availability of which may be restricted to interested parties, in order to avoid public security concerns;
- b) Co-location options at the sites indicated in the preceding point, including physical co-location and, as appropriate, distant co-location and virtual co-location;
- c) Equipment characteristics, including restrictions, if any, on equipment that may be installed under the regime of co-location;
- d) Security issues, including measures put in place by notified operators to ensure the security of their locations;
- e) Access conditions for staff of competing operators;
- f) Safety standards;
- g) Rules for the allocation of co-location space where this is limited;

h) Conditions whereby beneficiaries may visit the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.

4 – For the purposes of point c) of paragraph 1, the conditions governing access to the notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing shall be specified.

5 – For the purposes of point d) of paragraph 1, the following items shall be specified:

a) Time needed to respond to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters;

b) Standard contract terms, including, where appropriate, compensation provided for failure to meet the time limit applicable for replying to requests;

c) Prices or pricing formulae for each feature, function and facility provided for.

Article 70

Obligation of non-discrimination

The imposition of the obligation of non-discrimination consists particularly of the requirement for an undertaking to apply equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and to provide services and information to third parties under the same conditions and with the same quality as the services and information provided to its own departments or to those of its subsidiaries or partners.

Article 71

Obligation of accounting separation

1 – The imposition of the obligation for accounting separation in relation to specified activities related to access and interconnection consists, particularly, of the requirement that operators, and especially those that are vertically integrated, present their wholesale and internal transfer prices in a form that has transparency in order to ensure, *inter alia*, compliance with the obligation of non-discrimination where applicable or, where necessary, to prevent unfair cross-subsidy.

2 – For the purposes of the provision of the preceding paragraph, the NRA may specify the format and accounting methodology to be used.

3 – Operators shall make available to the NRA, upon request, their accounting records, including data on revenues received from third parties, in order that compliance with obligations of transparency and non-discrimination may be verified.

4 – The NRA may publish the information made available pursuant to the preceding paragraph, to the extent that is necessary to contribute to an open and competitive market, while respecting the commercial of confidentiality such information.

Article 72

Obligations of access to, and use of, specific network facilities

1 – The NRA may impose obligations on operators to respond to reasonable requests for access to and use of specific network components and associated facilities, particularly in situations where the denial of access or the setting of unreasonable conditions would hinder the emergence of a sustainable competitive market at the retail level or harm the interests of end-users.

2 – In exercising the competence provided for in the preceding paragraph, the NRA may, in particular, impose the following obligations on operators:

- a) To give third parties access to specified network components and/or facilities, including unbundled access to the local loop;
- b) Not to withdraw access to facilities where access has been already granted;
- c) To interconnect networks or network facilities;
- d) To provide co-location or other forms of facility sharing, including duct, building or mast sharing;
- e) To provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- f) To grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- g) To provide specified services on a wholesale basis for resale by third parties;
- h) To provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- i) To negotiate in good faith with undertakings requesting access.

3 – The NRA may attach conditions in respect of fairness, reasonableness and timeliness to the imposition of obligations provided for in the preceding paragraph.

4 – In considering whether or not to impose the obligations set forth in the preceding paragraphs, the NRA shall take special account of the following factors, particularly when assessing whether such obligations would be proportionate to the regulatory objectives set out in article 5:

- a) The technical and economic viability of using or installing competing facilities, in the light of the rate of market development and taking into account the nature and type of interconnection and access involved;
- b) The feasibility of providing the proposed access, in relation to the available capacity;
- c) The initial investment by the facility owner, taking into account the risks involved in making such investment;
- d) The need to safeguard competition over the long term;
- e) Any relevant intellectual property rights, where appropriate;
- f) The provision of pan-European services.

Article 73

Technical and operational conditions

1 – Where necessary and to ensure the normal functioning of the network, the NRA may, when imposing the obligations provided for in paragraphs 1 and 2 of the preceding article, impose technical or operational conditions on the provider and/or beneficiaries of access.

2 – The conditions imposed pursuant to the preceding paragraph shall be objective, transparent, proportionate and non-discriminatory, and where they refer to the application of technical rules or specifications, shall comply with rules on standardization, in accordance with the terms of article 29.

Article 74

Obligation of price control and cost accounting

1 – Where a market analysis indicates that, as a result of a lack of effective competition, the operator concerned might sustain prices at an excessively high level or apply a price squeeze to the detriment of end-users, the NRA may impose obligations in respect of cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems for the provision of specific types of access or interconnection.

2 – In imposing the obligations referred to in the preceding paragraph, the NRA shall:

- a) Take into account the investment made by the operator and allow said operator a reasonable rate of return on the capital invested, taking the risks involved into account;
- b) Ensure that any mandatory cost recovery mechanism or pricing methodology promotes efficiency and sustainable competition and maximises benefits for consumers; further account may also be taken of prices available in comparable competitive markets.

Article 75

Demonstration of cost orientation

1 – Operators subject to the obligation of cost orientation of prices shall demonstrate that charges are based on costs, including a reasonable rate of return on the investments made.

2 – The NRA may require an operator to provide full justification for its prices, and may, where appropriate, require such prices to be adjusted.

3 – The NRA may use cost accounting methods independent of those used by the undertaking, for the purpose of calculating the cost of efficient provision of services.

Article 76

Verification of the cost accounting system

1 –The NRA, or another independent body appointed by the NRA, shall, in order to ensure compliance, undertake an annual audit of the cost accounting system intended to allow the control of prices, and shall, in addition, issue and publish the respective statement.

2 – Operators upon whom the NRA imposes the obligation of implementing cost accounting systems shall make public the respective description, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs.

SECTION III

Obligations applicable to all undertakings

Article 77

Imposition of access and interconnection obligations

1 – The NRA is charged with imposing obligations of access and interconnection on any undertaking, as far as such obligations may be necessary, regardless of whether or not it holds significant market power, under the following terms:

- a) On undertakings that control access to end-users, in particular those that operate cable networks, including, in justified cases, the obligation to interconnect their networks;
- b) To provide access to APIs (application program interfaces) and EPGs (electronic programme guides), on fair, reasonable and non-discriminatory terms, in order to ensure that digital radio and television broadcasting services as specified by the competent authorities under the law are accessible to end-users.

2 – When imposing the obligations provided for in the preceding paragraph, the NRA may establish technical or operational conditions pursuant to article 73.

3 – Obligations imposed in accordance with the preceding paragraphs shall be objective, transparent, proportionate and non-discriminatory.

Article 78

Provision of conditional access

1 – All operators of conditional access services which, irrespective of the means of transmission, provide access services to digital television and radio services, whereby broadcasters depend on such services in order to reach any group of potential viewers or listeners, shall:

- a) Offer technical services to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Community competition law, enabling the digitally-transmitted services of broadcasters to be received by viewers or listeners duly authorised by means of decoders administered by the service operators, and comply with Community competition law;
- b) Keep separate financial accounts regarding their activity as conditional access providers.

2 – Having regard to the provision of point a) of the preceding paragraph, the conditions of provision, including prices, disclosed by broadcasters of digital television shall specify whether or not material related to conditional access is supplied.

3 – Operators referred to in paragraph 1 shall notify the NRA of the technical procedures adopted to ensure the interoperability of the different conditional access systems, within five days from the implementation thereof.

4 – For the purposes of the preceding paragraph the NRA is charged with publishing the reference to the applicable technical specifications, through a notice in Series III of the *Diário da República* and in a digital format on the Internet.

Article 79

Transfer of control

1 – Operators providing conditional access services shall adopt systems with suitable technical capability for a cost-effective transfer of control, to be agreed with the support network operators.

2 – The transfer referred to in the preceding paragraph shall allow the full control by network operators, at local or regional level, of services using such conditional access systems.

Article 80

Industrial property rights

1 – Without prejudice to applicable legislation, holders of industrial property rights in respect of conditional access products and systems are to ensure that licences to manufacturers of consumer equipment are granted on fair, reasonable and non-discriminatory terms.

2 – The granting of licences referred to in the preceding paragraph, which shall also take into account technical and commercial factors, shall not be subject to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

- a) A common interface allowing connection with other conditional access systems than that of the holder of the industrial property right;
- b) Means specific to another conditional access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

Article 81

Amendment or removal of conditional access obligations

1 – The NRA may carry out a market analysis under the terms set out in the present law, in order to decide whether or not to amend or remove the conditional access obligations provided for in articles 78 to 80.

2 – Where, as a result of the market analysis, the NRA finds that one or more operators do not have significant market power, it may determine the amendment or removal of the conditional access obligations with respect to those operators, provided that there is no adverse effect on:

- a) Accessibility for end-users to radio and television broadcasts and to broadcasting channels and services specified in accordance with article 43;
- b) The prospects for effective competition in the markets for retail digital television and radio broadcasting services and conditional access systems and other associated facilities.

3 – The NRA shall give an appropriate period of notice to parties affected by such amendment or removal of obligations.

4 – The provisions of this article are without prejudice to the possibility of imposing obligations in respect of the presentation of electronic programme guides and similar listing and navigation facilities, under the law.

CHAPTER IV

Control on retail markets

Article 82

Minimum set of leased lines

1 – The NRA shall impose obligations on undertakings with significant market power regarding the provision of the minimum set of leased lines, defined in article 29, as well as the conditions for such provision set out in the following article, with reference to the full minimum set or specific components thereof, in all or part of the national territory.

2 – The NRA is charged with:

a) Defining appropriate objectives for the established conditions of supply, where it considers that the achieved performance for the provision of the minimum set of leased lines does not meet the needs of users;

b) Authorising the amendment of conditions governing provision in a specific case, where, faced with a particular request, an undertaking has grounds for considering the provision of a leased line in the minimum set under its published tariffs and supply conditions to be unreasonable.

Article 83

Conditions for the provision of leased lines

1 – The provision of the minimum set of leased lines by undertakings identified as having significant market power shall follow the basic principles of non-discrimination, cost orientation and transparency.

2 – The principle of non-discrimination makes mandatory the application of similar conditions in similar circumstances to organisations providing similar services, and where applicable, the provision of leased lines to others under the same conditions and of the same quality as they provide to their own services, or to those of their subsidiaries or partners.

3 – For the purposes of the principle of cost-orientation, undertakings shall draw up and implement a suitable cost accounting system.

4 – The principle of transparency makes disclosure of the following information on the minimum set of leased lines mandatory:

a) Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point;

b) Tariffs, including the initial connection charges, the periodic rental charges and other charges; where tariffs are differentiated, this must be indicated;

c) Supply conditions, including, in particular and obligatorily, information concerning the ordering procedure, the typical delivery period, the contractual period, the typical repair time, and refund procedure, where such exists.

5 – For the purposes of point c) of the preceding paragraph:

a) Typical delivery period means the period elapsing from the date when the user has made a firm request to lease a line until the time at which 95% of all leased lines of the same type have been put through to the customers, which period shall be established on the basis of the actual delivery periods of leased lines during a recent period of reasonable duration, and which calculation does not include cases where late delivery periods were requested by users;^(*)

b) Contractual period means the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept;^(*)

c) Typical repair time means the period elapsing from the time when a failure message is relayed to the responsible unit within the undertaking up to the moment at which 80% of all leased lines of the same type have been re-established and, where appropriate, at which users have been notified of their return to operation; where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be indicated.^(*)

6 – The NRA shall keep available, with a suitable level of detail, information on the cost accounting systems applied by undertakings and shall submit this information to the European Commission on request.

Article 84

Selection and pre-selection

1 – Undertakings declared as having significant market power for the provision of connection to and use of the public telephone network at a fixed location shall provide their subscribers with access to the services of any provider of publicly available telephone services with which said undertakings are interconnected:

a) On a call-by-call basis by dialling a selection code of the undertaking;

b) By means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling the selection code of the undertaking.

2 – The NRA shall assess and decide on user requirements for the inclusion of facilities provided for in the preceding paragraph on other networks or in other ways, in accordance with the market analysis procedure set out in article 59 and under the terms of article 72.

3 – The NRA shall ensure that pricing for access and interconnection related to the provision of the facilities in paragraph 1 complies with the principle of cost orientation and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

4 – The NRA shall, following the general consultation procedure provided for in article 8, in determining the rules necessary for the performance of selection and pre-selection.

Article 85

Other controls

1 – The NRA shall impose appropriate regulatory obligations on undertakings identified as having significant market power in a given retail market, previously defined and analysed pursuant to the present law, where cumulatively:

- a) It determines a lack of effective competition in that retail market;
- b) It concludes that the imposition of obligations laid down in chapter III of the present title or in article 84 would not result in the achievement of the regulatory objectives set out in article 5.

2 – The regulatory obligations imposed under the preceding paragraph shall be based on the nature of the problem identified and be proportionate and justified in respect of the objectives laid set out article 5, and may require in particular that the identified undertakings:

- a) Do not charge excessive prices;
- b) Do not inhibit market entry or restrict competition by setting predatory prices;
- c) Do not show undue preference to specific end-users;
- d) Do not unreasonably bundle services.

3 – With specific reference to prices practised by such undertakings and in order to protect end-user interests while at the same time promoting effective competition, the NRA may apply appropriate price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices in comparable markets.

4 – Without prejudice to articles 93 and 94, the NRA shall not apply retail control mechanisms under this article to geographical or user markets where it is satisfied that there is effective competition.

5 – Undertakings subject to price regulation pursuant to this article or subject to other relevant retail controls shall implement analytical accounting systems which are appropriate for the application of the imposed measures.

6 – The NRA, or an independent body which it has appointed, shall undertake an annual audit of the cost accounting system supporting price controls, in order to verify the compliance thereof, and shall issue and publish the respective statement.

7 – The NRA shall, upon request, submit information to the European Commission in respect of the retail controls applied and, where appropriate, in respect of the cost accounting systems employed.

TITLE V

Universal service and additional mandatory services

CHAPTER I

Universal service

SECTION I

Scope of the universal service

Article 86

Concept

1 – The universal service consists of a minimum set of services, as defined in the present law, of specified quality which is available to all users regardless of their geographical location and at an affordable price.

2 – The scope of the universal service shall evolve in line with advances in technology, market developments and changes in user demand, which scope shall be modified where justified by such evolution.

3 – It is incumbent upon the Government or the NRA, in the pursuit of their respective assignments:

a) To determine the most efficient and appropriate solutions for ensuring the implementation of the universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality;

b) To minimise market distortions, in particular the provision of services made at prices or under other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

Article 87

Scope of the universal service

1 – The provision of a minimum set of services made available in the scope of the universal service shall include:

a) Connection at a fixed location to the public telephone network and access to publicly available telephone services at a fixed location;

b) Provision of a comprehensive directory and of a comprehensive telephone directory enquiry service;

c) Adequate provision of public pay telephones.

Article 88

Network connection and access to telephone services at a fixed location

1 – The providers of the universal service shall meet all reasonable requests for connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location.

2 – The connection and access referred to in the preceding paragraph shall allow end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

Article 89

Directory and enquiry services

1 – The following universal service obligations shall be comprised in the scope of directory and enquiry services:

a) To draw up, publish and make available to end-users a comprehensive directory, which shall be printed and/or electronic and which comprises all subscribers of publicly available telephone services, without prejudice to provisions on protection of personal data and privacy;

b) To update and make available every year the directory referred to in the preceding point;

c) To provide end-users with an enquiry service, through a short number, involving the disclosure of data in the directory referred to in point a);

d) To apply the principle of non-discrimination to the treatment and presentation of information that has been provided, including information submitted by other undertakings.

2 – For the purpose of the preceding paragraph, undertakings providing publicly available telephone services shall agree with the providers of the universal service on the format and conditions for the provision of relevant information on the respective subscribers, on terms which are fair, objective, cost oriented and non-discriminatory.

3 – In the absence of an agreement and in the event of non-compliance with the terms agreed or with the obligation established in the preceding paragraph, the NRA may demand that undertakings providing publicly available telephones services submit the information referred to in the preceding paragraph, determining, where necessary, the format and conditions for the provision thereof, in order to render it available to the providers of the universal service, aiming at complying with the obligations laid down in points a) and c) of paragraph 1.

4 – The NRA is hereby empowered to create and manage, directly or through an appointed independent body, a database comprising the information received pursuant to the preceding paragraph, approving for this purpose the respective functioning conditions, following the prior opinion of the NCDP.

5 – The NRA shall approve and disclose the form of directories referred to in the present article and the conditions by which such directories are to be made available to end-users.

Article 90

Public pay telephones

1 – The NRA shall define, following consultation under the terms of article 8, the obligations applicable to the providers of universal service in respect of the provision of public pay telephones, in order to ensure that the reasonable needs of populations, including users with disabilities, are met.

2 – The obligations defined by the NRA shall take into account the possible availability of facilities or comparable services and take account of the needs of end-users in terms of geographical dispersion, population density and quality of services, including in particular the determination of different means of payment.

3 - Public pay telephones of universal service providers shall allow:

a) Access, without charge, to the various emergency systems, using the single European emergency number “112” and other emergency and assistance numbers defined in the National Numbering Plan, without the need to use coins, cards or any other means of payment;

b) Access to the comprehensive directory enquiry services under the terms defined in point c) of paragraph 1 of article 89.

4 – Pre-payment telephone cards for access to publicly available telephone services by means of public pay telephones operated by universal service providers shall be of one type only, so that the use thereof shall be viable on any public pay telephone operated by such providers.

5 – Universal service providers shall comply with the technical rules of access to urban buildings, in accordance with the specific legislation, in order to ensure that end-users with disabilities have access to the service.

Article 91

Specific measures for disabled users

1 – Universal service providers shall make available specific provisions in order to ensure that end-users with disabilities enjoy access that is equivalent to that enjoyed by other end-users, to publicly available telephone services, including access to emergency services, directory enquiry services and directories.

2 – The specific provisions may, in particular, consist of:

a) The provision of telephones and/or public text telephones or equivalent measures for people who are deaf or who have speech-impairment;

b) The provision of services such as directory enquiry services or equivalent measures free of charge for blind or visually impaired people;

c) The provision of itemised bills in alternative formats upon the request of a blind or visually impaired person.

3 – It is incumbent upon the NRA, following the general consultation procedure laid down in article 8, to define the terms and conditions by which such provisions are to be made available.

4 – The NRA may take specific measures to ensure that end-users with disabilities may also benefit from the choice of service providers which is available to the majority of end-users.

Article 92

Quality of service

1 – Universal service providers shall make available to end-users as well as to the NRA, appropriate and up-to-date information on their performance in the provision of the universal service, based on quality service parameters, definitions and measurement methods established in the annex.

2 – The NRA may specify, in particular, additional rules in respect of quality of service in order to assess the performance of universal service providers as regards the provision of services to end-users and consumers with disabilities, where relevant parameters have been defined.

3 – Information on the performance of the universal service providers as regards the parameters referred to in the preceding paragraph shall be made available to end-users and likewise to the NRA.

4 – The NRA may further specify the content, form and manner in respect of which the information referred to in the preceding paragraphs shall be provided, in order to ensure that end-users and consumers have access to clear, comprehensive and comparable information.

5 – Without prejudice to the provision of the preceding paragraphs, the NRA, following the general consultation procedure laid down in article 8, may set performance objectives applicable to the different obligations of the universal service.

6 – The NRA may order independent audits or mechanisms by which the performance of the universal service providers may be verified, which shall be at the expense of such providers and which shall have the aim of ensuring the accuracy and comparability of the data made available by providers.

SECTION II

Prices

Article 93

Price regime

1 – The NRA shall take all necessary steps to ensure that affordability of access to universal service is guaranteed, having regard in particular to national consumer prices and national income.

2 – For the purposes of the preceding paragraph, the NRA shall assess and decide on the most suitable means by which affordable access may be guaranteed, whereby it may determine:

a) The availability of tariff options or packages which are different from those provided under normal commercial conditions, in particular to ensure that consumers on low incomes or with

special social needs are not prevented from accessing or using the publicly available telephone service;

b) The imposition of price caps and the application of common tariffs, including geographical averaging of prices, throughout the territory;

c) Other similar schemes.

3 – Where any of the measures referred to in the preceding paragraph have been imposed, the NRA shall ensure that the implemented conditions are fully transparent and are published and that such conditions are applied in accordance with the principle of non-discrimination.

4 – The NRA may require that specific conditions practised by universal service providers be modified or withdrawn at any time.

5 – Without prejudice to the provisions of the preceding paragraphs, other measures may be implemented, as an alternative or cumulatively, in order to support consumers identified as having low incomes or special social needs.

Article 94

Control of expenditure

1 – In order to allow subscribers to verify and control the charges incurred in using the public telephone network at a fixed location and related publicly available telephone services, the universal service providers shall make available the following minimum set of facilities and mechanisms:

a) Itemised billing;

b) Selective and free of charge barring of outgoing calls of defined types or to defined types of numbers, upon the request of the subscriber, without prejudice to the provision of article 45;

c) Pre-payment systems for access to the public telephone network and use of publicly available telephone services;

d) Phased payment of fees for the connection to the public telephone network;

e) Measures applicable to the non-payment of telephone bills, pursuant to article 52.

2 – For the purposes of point a) of the preceding paragraph, the following minimum level of detail shall be ensured, without charge and without prejudice to legislation applicable in matters of protection of personal data and privacy:

a) Initial price of the connection to the telephone service, where applicable;

b) Subscription price, where applicable;

c) Price of use, identifying the different traffic categories, indicating each call and the respective charge;

d) Periodical equipment rental prices, where applicable;

e) Price for the installation of additional material and equipment requested subsequent to the commencement of service provision;

f) Subscriber's debts;

g) Compensation resulting from reimbursement.

3 – Universal service providers may offer, at the request of the subscriber, additional levels of detail, at reasonable tariffs or at no charge, and shall not include calls that are free of charge to the calling subscriber, including calls to helplines.

4 – For the purposes of point b) of article 1, the NRA, having heard the universal service providers, shall define the types of calls which are may be barred.

5 – The NRA shall waive the application of paragraph 1 where it is satisfied that the interests protected through the availability of facilities and mechanisms provided therein are duly safeguarded.

6 – Where universal service providers offer facilities and services additional to those referred to in article 87 or in point a) of paragraph 2 of article 93, they shall establish terms and conditions whereby the subscriber is not obliged to pay for facilities or services which are not necessary for the service requested.

SECTION III

Financing of the universal service

Article 95

Compensation for net cost burden

1 – Where the NRA considers that the provision of universal service may represent an unfair burden on the respective providers, it shall calculate the net costs of the universal service obligations in accordance with one of the following procedures:

- a) Calculating the net cost of the universal service obligation, taking into account any market benefit which accrues to the providers;
- b) Making use of the net costs of providing universal service identified by a designation mechanism in accordance with the provisions of the present law.

2 – The NRA shall define the concept of “unfair burden”, as well as the terms governing its determination, namely the periodicity of assessments and criteria to be employed.

Article 96

Calculation of the net cost

1 – Where the calculation of the net cost is to be undertaken, pursuant to point a) of the preceding article, the following assumptions shall apply:

- a) All means to ensure appropriate incentives, so that providers comply with universal service obligations in a cost efficient manner shall be considered;
- b) The cost of universal service obligations is to be calculated as the difference between the net cost, for an organization, of operating with the universal service obligations and of operating without the universal service obligations, whether the network is fully developed or is still

undergoing development and expansion. Due attention is to be given to correctly assessing the costs that providers would have chosen to avoid had there been no universal service obligation;

c) The calculation of net cost should take into account the benefits, including intangible benefits, obtained by the universal service operators;

d) The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the duplication of any direct or indirect benefits and costs;

e) The net cost of universal service obligations is to be calculated as the sum of the net costs arising from the specific components of universal service obligations.

2 – The calculation is to be based upon the costs attributable to:

a) Components of the identified services which are unavoidably provided at a loss or provided according to conditions of cost which fall outside normal commercial standards, which components may include access to emergency telephone services, provision of certain public pay telephones or the provision of certain services or equipment for people with disabilities;

b) Specific end-users or groups of end-users which can only be served at a loss or according to conditions of cost which fall outside normal commercial standards, as a result of the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the NRA.

3 – For the purpose of the provision of point b), this category is deemed to include end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

4 – The universal service providers shall make available all accounts and other relevant information in order to provide a basis for the calculation referred to in the present article, which accounts and information shall be audited by the NRA or a body independent of the interested parties and subsequently approved by the NRA.

5 – The NRA shall make publicly available the results of the cost calculation and the conclusions of the audit referred to in the present article.

Article 97

Financing

1 – Where the NRA verifies that the universal service has net costs and finds such costs to be unfair, it is incumbent upon the Government, upon request of the respective providers, to provide appropriate compensation by means of one or both of the following mechanisms:

a) Compensation from public funds;

b) Sharing the net cost with other undertakings providing publicly available electronic communications networks and services on national territory.

2 – Where the mechanism provided for in point b) of the preceding paragraph is applied, a compensation fund shall be established, to which fund undertakings providing publicly available electronic communications networks and services shall make contributions. Said fund shall be

administered by the NRA or an independent body appointed by the Government and under the supervision of the NRA.

3 – The criteria for sharing the universal service net cost between such undertakings as are obliged to contribute shall be defined by the Government, in accordance with the principles of transparency, minimal market distortion, non-discrimination and proportionality.

4 – For the purposes of the preceding paragraph, the entity managing the fund shall:

a) Collect the respective contributions, using a transparent and neutral means for collection in order that the double imposition of contributions may be avoided;

b) Oversee the transfer of sums and payments due to universal service providers;

c) Disaggregate and separately identify for each undertaking the charges related to the sharing of the cost of universal service obligations.

5 – The Government may choose not to require contributions for the compensation fund from undertakings whose national turnover does not exceed a set limit, which limit is to be established.

6 – The NRA shall ensure that the criteria for cost sharing and the constitutive elements of the mechanism employed are publicly available.

Article 98

Report

Without prejudice to confidential matters, where the universal service presents net costs, the NRA shall draw up and publish an annual report setting out the calculated cost of universal service obligations, indicating the contributions made to the compensation fund by all the undertakings involved, and identifying any market benefits which may have accrued to the universal service providers, in the event that a compensation fund has been established and is in effective operation.

SECTION IV

Designation of universal service providers

Article 99

Universal service providers

1 – The universal service may be provided by more than one undertaking, differentiated by the provisions included or by geographical area, without prejudice to provision throughout national territory.

2 – The process for designating providers shall be efficient, objective, transparent and non-discriminatory, ensuring that no undertaking is excluded a priori from being designated.

3 – It is incumbent upon the Government, by resolution of the Council of Ministers, to designate the undertaking or undertakings responsible for the provision of the universal service following a tender, the regulation of which shall be approved by administrative regulation of the members of the Government with responsibility for areas of finance and electronic communications.

4 – The terms of said tender shall ensure that the universal service is provided in a cost-effective manner, and may be used as a means of determining the net cost of the universal service obligation in accordance with point b) of article 95.

5 – The terms of the tender shall also set out provisions for the maintenance of obligations, in the event of demerger, merger or assignment of the provider's contractual position.

CHAPTER II

Additional mandatory services

Article 100

Additional mandatory services

The Government may decide to make additional services, apart from services within the universal service obligations, publicly available, which services shall not be compensated by means of the respective cost sharing mechanism by undertakings providing electronic communications networks and services.

TITLE VI

Digital television and conditional access

Article 101

Wide-screen television service

Undertakings which establish public electronic communications networks for the distribution of digital television services shall ensure that such networks are capable of distributing wide-screen television services and programmes, while network operators which receive and redistribute wide-screen television services or programmes shall maintain the same format.

Article 102

Interoperability of digital interactive television services

1 – In order to promote the free flow of information, media pluralism and cultural diversity:

a) Providers of digital interactive television services for distribution to the public on digital interactive television platforms, regardless of the transmission mode, shall favour the use of an open API;

b) Providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms shall encourage compliance with an open API in accordance with the minimum requirements of the relevant standards or specifications.

2 – For the purposes of the preceding paragraph, entities shall comply with rules of standardization according to the provisions of article 29 and notify the NRA of the technical solutions adopted.

3 – Without prejudice to the imposition of compulsory access pursuant to point b) of paragraph 1 of article 77, the proprietors of APIs shall cooperate with providers of digital interactive television services, in order to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable the latter to provide the respective services supported by the API in a fully functional form.

Article 103

Interoperability of consumer digital television equipment

1 – The consumer equipment intended for the reception of digital television signals, capable of descrambling such signals, for sale or rent or otherwise made available, shall possess the capability:

- a) To allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognised European standards organisation;
- b) To display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

2 – Analogue television sets with an integral screen of visible diagonal greater than 42 cm which are put on the market for sale or rent are to be fitted with at least one open interface socket, as standardised by a recognised European standards organisation, permitting simple connection of peripherals, especially additional decoders and digital receivers.

3 – Digital television sets with an integral screen of visible diagonal greater than 30 cm which are put on the market for sale or rent are to be fitted with at least one open interface socket permitting simple connection of peripherals, and shall be able to pass all the components of a digital television signal, including the audio and video streams, information relating to interactive and conditionally accessed services and application program interface information as well as copy protection information.

4 – The open interface socket referred to in the preceding paragraph shall either be standardised or conform to a standard adopted by a recognised European standards organisation, or alternatively conform to a specification used by the industry.

5 – It is incumbent upon the NRA to publish, through notice in Series III of the *Diário da República*, references to the rules mentioned in paragraphs 2 and 4.

Article 104

Illicit devices

1 – The following activities are hereby prohibited:

- a) The manufacture, import, distribution, sale, rental or possession for commercial purposes of illicit devices;

- b) The installation, maintenance or replacement for commercial purposes of illicit devices;
- c) The use of commercial communications to promote illicit devices.
- d) Private acquisition, use, ownership or mere possession, for whatever reason, of illicit devices by the acquirer, user, owner or holder, or a third party.^(**)

2 – For the purposes of the preceding paragraph:

- a) “Illicit device” shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider;
- b) “Conditional access device” shall mean any equipment or software designed or adapted to give access to a protected service in an intelligible form;
- c) “Protected service” shall mean any television, radio broadcasting or information society service, provided that is supplied for remuneration and on the basis of conditional access, or where the provision of conditional access to the referred services is considered as a service in its own right.

3 – The actions set out in point a) of paragraph 1 are crimes punishable with up to three years imprisonment or, where a more serious penalty is not applicable, with a penalty fine.

4 – The attempt shall be punishable.

5 – Criminal proceedings depend upon a complaint.

TITLE VII

Fees, supervision and monitoring

CHAPTER I

Fees

Article 105

Fees

1 – Fees may be imposed on:

- a) Declarations supporting rights issued by the NRA pursuant to paragraph 5 of article 21;
- b) The exercise of the activity of electronic communications networks and services provider, on an annual basis;
- c) The assignment of frequency usage rights;
- d) The assignment of rights of use for numbers and the reservation thereof;
- e) The use of numbers;
- f) The use of frequencies.

2 – The amounts of fees referred to in points a) to e) of the preceding paragraph shall be established by order of the member of the Government responsible for the area of electronic communications and shall constitute revenue for the NRA.

3 – The use of frequencies, whether or not comprising a right of use, is subject to the fees set out in Decree-Law no 151-A/2000 of 20 July.

4 – The amounts of fees referred to in points a) to d) of paragraph 1 shall be determined with regard to the administrative costs incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in article 28, which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring of compliance and other market control, as well as regulatory work involving the preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; such fees shall be imposed upon undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and associated charges.

5 – The NRA shall publish an annual report of its administrative costs and of the total sum resulting from the collection of charges referred to in points a) to d) of paragraph 1, in order to perform the appropriate adjustments in respect of the difference between the total sum of the charges and the administrative costs.

6 – The fees referred to in points e) and f) of paragraph 1 shall reflect the need to ensure the optimal use of frequencies and numbers, shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take the regulatory objectives set forth in article 5 into account.

Article 106

Fees for rights of way

1 – The fees for rights of way shall reflect the need to ensure the optimal use of resources and shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose taking into account the regulatory objectives set forth in article 5.

2 – The rights and charges as regards the implanting, crossing or passing over of systems, equipments and further resources of undertakings providing publicly available electronic communications networks and services, at a fixed location, of a public or private municipal domain, may give rise to the establishment of a municipal fee for rights of way (MFRW), which shall comply with the following principles:

a) The MFRW shall be determined on the basis of the application of a percentage on each bill issued by undertakings providing publicly available electronic communications networks and services, at a fixed location, to all final clients of the corresponding municipality;

b) The percentage mentioned in the preceding paragraph shall be approved annually by each municipality prior to the end of December of the year preceding that of its enforcement, and shall not exceed 0,25%.^(*)

3 – In municipalities where the MFRW is collected, undertakings providing publicly available electronic communications networks and services, at a fixed location, shall explicitly include the amount due in the bills of end-clients of publicly available electronic communications at fixed locations.

4 – The State and the Autonomous Regions shall not collect fees or other charges from undertakings providing publicly available electronic communications networks and services for the implanting, crossing or passing over of systems, equipments and further physical resources necessary to their activity, at the surface or underground of the private or public domain of the State and of the Autonomous Regions.

CHAPTER II

Supervision and monitoring

Article 107

Out-of-court dispute resolution

1 – Without prejudice to the resort to courts and to entities responsible for the protection and promotion of consumer rights, namely the Consumer Institute, end-users may submit disputes with undertakings providing electronic communications networks and services to the legally constituted arbitration and mediation mechanisms.

2 – It is incumbent upon the NRA to encourage the development of mechanisms for out-of-court resolution of disputes which may arise between undertakings providing electronic communications networks and services and end-users.

3 – For the purposes of the preceding paragraph, the NRA may cooperate in the creation of the referred mechanisms or establish agreements with entities which have previously carried out the implementation of such mechanisms, and in particular set out a system whereby the NRA, within the scope of its supervision and monitoring powers, receives regular reports in respect of consumer complaints submitted to such mechanisms.

Article 108

Provision of information

1 – Entities subject to obligations pursuant to the present law shall submit to the NRA all information, including financial information, in respect of their activity, in order that the NRA may pursue all assignments provided for in the law.

2 – For the purposes of the preceding paragraph, entities shall identify, in a substantiated manner, the information deemed confidential and shall attach, where appropriate, a non-confidential copy of documents comprising such information.

3 – The requests for information made by the NRA shall comply with the principles of proportionality, shall be appropriate to their intended aims and shall be duly substantiated.

4 – The requested information shall be submitted within the time limits, and in the form and to the level of detail required by the NRA, which may establish the situations and periodicity governing the submission of such information.

5 – In the event that the NRA provides the European Commission, at its request, with information obtained pursuant to the preceding paragraphs, the NRA shall inform the undertakings concerned

of such provision, and it may submit an explicit and substantiated request to the European Commission not to make the information provided available to other regulatory authorities.

6 – The information submitted the NRA pursuant to this article may be made available to the regulatory authorities of other Member States, as a result of a substantiated request, where necessary to allow the concerned authorities to fulfil their respective responsibilities under Community law.

7 – Without prejudice to the provision of the final part of paragraph 4, the European Commission and the national regulatory authorities of other Member States shall ensure the confidentiality of information submitted by the NRA where such information has been identified as such in accordance with applicable legislation.

Article 109

Purposes of the information request

1 – The NRA may request information in particular for the following purposes:

- a) Procedure and assessment of applications for the assignment of rights of use;
- b) Market analysis;
- c) Verification, on a case-by-case basis, of compliance with the conditions established in articles 27, 32 and 34, whether following a complaint or upon its own initiative;
- d) Systematic or case-by-case verification of compliance with the conditions established in articles 28, 97 and 105;
- e) Publication of comparable reports on quality and pricing of services for the benefit of consumers;
- f) Clearly defined statistical purposes.

2 – The information referred to in points b) to f) of the preceding paragraph shall not be requested prior to or as a condition of the exercise of the activity.

Article 110

Non-compliance

1 – Without prejudice to other applicable sanctionary measures, where the NRA verifies that an undertaking does not comply with one or more of the conditions established in articles 27, 28, 32 and 34, it shall notify the undertaking of such findings and give the undertaking an opportunity to state its views or remedy any breaches within a period of one month following notification.

2 – The NRA may set a longer or shorter period, in the latter case upon the agreement of the undertaking or in the event of repeated breaches.

3 – If the undertaking concerned does not remedy the breaches within the period referred to in the preceding paragraphs, the NRA shall take appropriate and proportionate measures aimed at ensuring compliance with the conditions referred to in paragraph 1 of the present article.

4 – The imposed measures and the grounds therefor shall be communicated by the NRA to the undertaking concerned within 5 days of their approval, and a reasonable period shall be stipulated for the undertaking to comply with the measure.

5 – In cases of serious and repeated breaches of the conditions referred to in articles 27, 28, 32 and 34 and in the event that the NRA deems that, in a particular case, the procedures set forth in paragraphs 1 and 3 are not appropriate for remedying the situation or in the event that the measures referred to in paragraph 3 and 4 are not complied with, the NRA may determine the suspension of the activity or the suspension, up to a maximum period of two years, full revocation or partial revocation of the respective usage rights.

Article 111

Interim measures

1 – Where the NRA has evidence of any breach of the conditions referred to in articles 27, 28, 32 and 34 which represents an immediate and serious threat to public order, public security or public health or which may create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision, setting the period during which the measures shall be in force.

2 – In the cases provided for in the preceding paragraph, the NRA shall thereafter give the undertaking concerned an opportunity to state its view and to propose any remedies.

3 – The provisions of the preceding paragraphs are without prejudice to the regime of interim measures set out in the Code of Administrative Procedure.

Article 112

Monitoring

The NRA is charged with monitoring compliance with the provisions of this law and respective regulations, through its monitoring agents or representatives duly qualified by the Board of Directors, without prejudice to the competences conferred upon other entities, including the Inspectorate General of Economic Activities (IGEIA), the Directorate General of Customs (DGC), the National Commission for Data Protection (NCDP), the Consumer Institute and competent authorities in competition matters.

Article 113

Breaches and fines

1 – Without prejudice to other applicable sanctions, the following irregularities shall be deemed as breaches:

a) Non-compliance with the decision of the NRA taken in the course of the dispute resolution, in violation of paragraph 1 of article 10 and paragraph 2 of article 12;

b) Failure to cooperate with the NRA, in violation of paragraph 5 of article 10;

- • c) Non-compliance with obligations laid down in paragraphs 1, 2 and 6 of article 21;
- • d) Violation of the terms of article 23;
- • e) Non-compliance with the obligation to notify agreements, set out in paragraph 1 of article 25;
- • f) Non-compliance with the sharing determination referred to in paragraph 2, as well as failure to comply with obligations laid down in paragraphs 3 and 4, all of article 25;
- • g) Non-compliance with obligations provided for in paragraphs 1, 3 and 4 of article 26;
- • h) Non-compliance with any of the conditions set forth in paragraphs 1 and 2 of article 27, except for the provisions of point r) of paragraph 1 of the same article;
- • i) Non-compliance with any of the specific obligations provided for in article 28;
- • j) Non-compliance with mandatory rules and specifications, in violation of paragraphs 1 and 5 of article 29;
- • l) The use of frequencies without having obtained the respective right of use, where required, or non compliance with any of its terms, in violation of paragraph 1 of article 30;
- • m) Non-compliance with any of the conditions defined pursuant to paragraphs 1 and 2 of article 32, except for that in point f) of paragraph 1 of the same article;
- • n) The use of numbers without having obtained the respective right of use, or non compliance with any of its terms, in violation of paragraph 1 of article 33;
- • o) Non-compliance with any of the conditions set out in paragraphs 1 and 2 of article 34, except for that in point f) of paragraph 1 of the same article;
- • p) The transfer of rights of use for frequencies without notification, in violation of paragraph 2 of article 37, as well as the transfer of such rights in violation of paragraph 4 of the same article;
- • q) The transfer of rights of use for numbers, in violation of the terms and conditions defined by the NRA, provided for in article 38;
- • r) The violation of rights of users and subscribers, in breach of paragraphs 1 and 2 of article 39;
- • s) Non-compliance with the obligation set out in paragraph 3 of article 39;
- • t) The use of accession contracts without prior approval, in violation of paragraph 4 of article 39;
- • u) The violation of the obligation defined pursuant to paragraphs 1 and 2 of article 40;
- • v) Non-compliance with the obligations provided for in paragraphs 1 and 3 of article 41;
- • x) Non-compliance with measures provided for in paragraphs 1 and 3 of article 42;
- • z) Non-compliance with the “must carry” obligations provided for in paragraph 1 and in the terms of paragraph 3 of article 43;
- • aa) Non-compliance with the barring obligation, in violation of paragraph 1 of article 45;
- • bb) Refusal to enter into a contract, in violation of paragraph 5 or 6 of article 46;
- • cc) Non-compliance with conditions provided for in paragraphs 3 or 4 of article 46;
- • dd) Non-compliance with information obligation provided for in paragraphs 1, 2 and 3 of article 47;
- • ee) Non-compliance with obligations laid down in paragraphs 1, 2 and 3 of article 48;
- • ff) Non-compliance with obligations laid down in paragraphs 1, 2 and 3 of article 49;

- gg) The violation of the obligation provide for in paragraph 4 of article 50;
- hh) The violation of rights of users referred to in paragraph 1 and the violation of the obligation provided for in paragraph 2 of article 51;
- ii) The suspension or termination of services in violation of paragraphs 1, 2, 3 and 4 of article 52;
- jj) Non-compliance with the obligation provided for in paragraph 1 of article 53;
- ll) The violation of the rights of subscribers to portability, provided for in paragraph 1 of article 54 and non-compliance with obligations established pursuant to paragraphs 2, 3 and 5 of article 54;
- mm) Non-compliance with obligations in the terms provided for in paragraph 3 of article 63;
- nn) Non-compliance with obligations provided for in paragraphs 1 and 2 of article 64;
- oo) Violation of confidentiality obligations provided for in paragraphs 1 and 2 of article 65;
- pp) Non-compliance with any of the obligations provided for in paragraphs 1, 3 and 4 of article 66;
- qq) Non-compliance with the conditions imposed pursuant to paragraph 1 of article 73;
- rr) Opposition to the pursuance of the audit, in violation of paragraph 1 of article 76;
- ss) Violation of obligations imposed under paragraphs 1 and 2 of article 77;
- tt) Non-compliance with obligations provided for in paragraphs 1, 2 and 3 of article 78;
- uu) Non-compliance with the obligation provided for in paragraph 1 of article 79;
- vv) Non-compliance with the conditions provided for in paragraphs 1 and 2 of article 80;
- xx) Non-compliance with obligations imposed under paragraph 4 of article 81;
- zz) Violation of obligations imposed pursuant to paragraph 1 and point a) of paragraph 2, as well as the amendment of provision conditions in violation of point b) of paragraph 2, all of article 82;
- aaa) Disrespect of principles provided for in paragraph 1, in violation of any of the terms set out in paragraphs 2 to 5 of article 83;
- bbb) Non-compliance with obligations provided for in paragraphs 1, 3 and 4 of article 84;
- ccc) Non-compliance with obligations provided for in paragraphs 1, 3 and 5 of article 85;
- ddd) Opposition to the pursuance of the audit, in violation of paragraph 6 of article 85;
- eee) Violation of obligations provided for in paragraphs 1 and 2 of article 88;
- fff) Violation of obligations and conditions provided for in paragraphs 1 to 3 and pursuant to paragraph 5 of article 89;
- ggg) Non-compliance with obligations provided for in paragraphs 1, 3 and 4 of article 90;
- hhh) Non-compliance with obligations provided for in paragraphs 1, 3 and 4 of article 91;
- iii) Non-compliance with obligations provided for in paragraphs 1 to 5 of article 92;
- jjj) Opposition to the pursuance of the audit, in violation of paragraph 6 of article 92;
- lll) Non-compliance with the determinations provided for in paragraphs 2 and 4 and obligations provided in paragraph 3 of article 93;
- mmm) Non-compliance with obligations provided for in paragraphs 1 to 6 of article 94;
- nnn) Non-compliance with the contribution obligation in violation of paragraph 2 of article 97;
- ooo) Violation of obligations provided for in article 101;

- • ppp) Non-compliance with obligations provided for in paragraphs 1, 2 and 3 of article 102;
- • qq) Violation of obligations provided for in paragraphs 1 to 4 of article 103;
- • rrr) Pursue of activities provided for in points b) and c) of paragraph 1 of article 104;
- • sss) Performance of actions mentioned in point d) of paragraph 1 of article 104;^(**)
- • ttt) Violation of obligations to provide information pursuant to paragraphs 1 and 3 of article 108;^(**)
- • uuu) Disrespect for decisions ordering interim measures on the terms of paragraph 1 of article 111;^(**)
- • vvv) Non-compliance with the obligation provided for in paragraph 2 of article 121;^(**)
- • xxx) Non-compliance with legitimate orders or commands of the NRA regularly notified to its addressees.^(**)
- • 2 – Breaches provided for from point a) to rrr) and from point ttt) to xxx) of the preceding paragraph are liable to a fine from €500 to €3740 and from €5000 to €5 000 000, whether they respect natural or legal persons, respectively.^(**)
- • 3 – The breach provided for in point sss) of paragraph 1 is liable to a fine from €500 to €3740 and from €5000 to €44891.81, whether it respects a natural or a legal person, respectively.^(**)
- • 4 – Where the breach results from the omission to comply with a legal duty or an order of the NRA, the application of sanctions or the compliance therewith do not exempt the offender from complying with the duty or order, where such compliance is still possible.^(**)
- • 5 – In the cases referred to in the preceding paragraph, the NRA may subject the offender to the injunction of complying with the duty or order in consideration, non-compliance of which within the set time limit may determine the application of a compulsory penalty payment on the terms of article 116.^(**)
- • 6 – The attempt and negligence regarding breaches provided for in this law shall be punishable.^(**)

Article 114

Additional sanctions

- • In addition to the fines set out in the preceding article, the following additional sanctions may also be applied, where such is justified by the seriousness of the infringement and the culpability of the offender:
- • a) Loss to the State of objects, equipment and illicit devices, for breaches provided for in points qq), rrr) and sss) of paragraph 1 of the preceding article;^(**)
- • b) Prohibition from the exercise of the respective activity for up to two years, for breaches provided for in points a), h), l), n), p), x) and z) of paragraph 1 of the preceding article;
- • c) Forfeiture of the right to participate in tenders or auctions promoted under the scope of the present law for up to two years, for breaches provided for in points l), p), x) and z) of the preceding article.

Article 115

Procedure and application

- 1 – The application of fines and additional sanctions provided for in the present law, as well as the decisions not to initiate breach proceedings, are incumbent upon the Board of Directors of the NRA.
- 2 – The Board of Directors of the NRA shall initiate breach proceedings, the examination thereof being incumbent upon the respective services.
- 3 – The assignments provided for in the preceding paragraphs may be delegated.
- 4 – The amount of the fines shall revert to the State at 60% and to the NRA at 40%.
- 5 – The objects declared lost in favour of the State pursuant to point a) of article 114 shall revert to the NRA.
- 6 – The provision of the preceding paragraphs does not apply to non-compliance with the conditions of paragraphs 3 and 4 of article 46, where the initiation and examination of the respective breach proceedings shall be incumbent upon the NCDP, as shall be the application of the respective fines, the amount of which reverts to that entity at 40%.

Article 116

Compulsory penalty payments

- 1 – Without prejudice to other applicable sanctions, in case of non-compliance with decisions of the NRA that impose administrative sanctions or that order, in exercising powers legally assigned, the adoption of certain behaviours or measures to companies providing electronic communications networks and services, the NRA may impose, where justified, a compulsory penalty payment, namely in cases referred in points a), e), f), g), p), v), x), z), gg), mm), pp), rr), ss), tt), zz), aaa), ccc), fff), hhh), ll), nnn), tt), uuu) and xxx) of paragraph 1 of article 113.^(**)
- 2 – The compulsory penalty payment shall consist of the imposition on the undertaking providing electronic communications networks and services of the payment of a pecuniary amount for each day of non-compliance beyond the deadline set for such compliance.
- 3 – The sanction referred to in the preceding paragraphs shall be determined according to criteria of reasonability and proportionality, having regard to the turnover of the offender in the preceding civil year, and with regard to the negative impact of the non-compliance on the market and on users, the daily amount of which sanction shall range from €10000 to €100000.
- 4 – The amounts established pursuant to the preceding paragraph may vary for each day of non-compliance, in an increasing trend, and shall not exceed the maximum amount of €3000000 or the maximum period of 30 days.
- 5 – The amount of the applied sanction shall revert to the State at 60% and to the NRA at 40%.
- 6 – Entities concerned shall be entitled to appeal against measures of the NRA pursued under this article to the commerce courts, pursuant to paragraphs 2 and 3 of article 13.

Article 117

Notifications

In the course of breach proceedings, where the notified person is not found or refuses to receive the notification performed under general terms, such notification shall be performed through the publication of an advertisement in two consecutive issues of one of the newspapers with a high print-run in the location where the notified person was last resident or with the highest print-run throughout national territory.

Article 118

Official report

1 – The official reports prepared within the scope of monitoring actions, on the basis of the compliance with the provisions of this law, shall be relied on as regards facts witnessed by the authors of the reports, except where there is convincing evidence to the contrary.

2 – The provision of the preceding paragraph applies to evidence obtained through devices or instruments approved according to the legal and regulatory terms.

3 – The official report shall comprise the address of the person concerned, whose attention shall be drawn to the fact that the address supplied shall be used for notification purposes.

4 – Where a legal person or a society is responsible for the breach, the identification, residence and working place of the respective managers, administrators or directors shall be indicated, where possible.

Article 119

Loss in favour of the State

1 – Seized objects that are not claimed within 60 days, following notification to interested parties ordering the delivery thereof, shall be deemed lost in favour of the State.

2 – Objects lost in favour of the State shall revert to the NRA, which shall dispose of said objects as appropriate.

CHAPTER III

Availability of information by the NRA

Article 120

Publication of information

1 – It is incumbent upon the NRA to make available and update information that contributes to an open and competitive market, in particular information on the following matters:

a) Application of the present regulatory framework;

b) Consultation procedures in course under the terms of articles 8 and 57, as well as the result of concluded procedures, except for confidential information;

- c) Rights, conditions, procedures, fees and decisions on general authorisations and rights of use;
- d) Transfer of rights of use;
- e) Registration of undertakings providing electronic communications networks and services;
- f) Obligations imposed on undertakings pursuant to chapters III and IV of title IV, identifying the respective markets, safeguarding confidential information or information constituting a business secret;
- g) Information on rights within the scope of the universal service, including those provided for in article 94, and conditions governing the provision of all publicly available services, thereby allowing consumers to assess available alternatives, in particular by means of interactive guides;
- h) A report on the costs of the universal service, pursuant to article 98;
- i) The results of the net cost calculation and of the audit carried out under the terms of article 96;
- j) Arbitration and mediation mechanisms, pursuant to paragraph 1 of article 107.

2 – The information referred to in the preceding paragraph shall be made available, in particular in digital form over the Internet, at the headquarters of the NRA and at all delegations thereof, as well as in its official publication, as appropriate and according to the nature of the matter.

3 – For the purpose of point c) of paragraph 1, where the information refers to different sectors of the Public Administration, the NRA shall make all reasonable efforts to make a complete picture of such information available to the user, especially with a view to facilitating the presentation of requests for rights to install resources, where such is possible without incurring disproportionate costs.

4 – The NRA shall transmit to the European Commission:

- a) A copy of all published information mentioned in point f) of paragraph 1;
- b) The notification of those undertakings deemed as having significant market power and the respective alterations which may take place;
- c) All information requested by the European Commission, having regard to the regular review of the application of electronic communications directives.

TITLE VIII

Final and transitory provisions

Article 121

Regularization of entitlements

1 – It is incumbent upon the NRA to make all the necessary amendments and adjustments to registers and licenses issued pursuant to Decree-Law no 381-A/97 of 30 December, to authorisations issued pursuant to Decree-Law no 241/97 of 18 September, as well as to declaration procedures provided for in Decree-Law no 290-C/99 of 30 July, for which the corresponding fee shall be waived.

2 – For the purpose of the preceding paragraph, all undertakings concerned shall supply the NRA with the necessary information and documents as requested.

3 – All obligations comprised in the bases for the concession of the telecommunications public service approved by Decree-Law no 31/2003 of 17 February shall remain in force, except where a more demanding regime results from the application of this law, in which case the regime resulting from the application of this law shall be in force.

4 – Undertakings shall maintain the rights of use for numbering resources and frequencies assigned prior to the publication of the present law, up to the end of the period established in the respective title of assignment, where such period exists.

5 – All obligations undertaken by undertakings licensed in tenders prior to the publication of the present law shall also remain applicable, and thus the respective tender instruments also remain in force, as regards the relevant part thereof.

6 – Where the process of entitlement regularization referred to in paragraph 1 results in a reduction of rights or an extension of obligations, the NRA may extend the validity of those rights and obligations until the 25th of April 2004, provided that the rights of other undertakings are not affected, which decision shall be notified to the European Commission.

Article 122

Maintenance of obligations

1 – Following the publication of the present law, the NRA shall immediately define and analyse the markets, declare which undertakings have significant market power and determine the imposition, maintenance, amendment or termination of obligations, pursuant to the present law.

2 – Until the NRA has provided the determination referred to in the preceding paragraph, the following obligations shall remain in force:

a) Those regarding the provision of leased lines comprised in article 23 of the Regulation for the Operation of Telecommunications Public Networks, approved by Decree-Law no 290-A/99 of 30 July, as amended by Decree-Law no 249/2001 of 21 September, as well as in articles 24, 26, 27 and 28 of the same statutory instrument;

b) Those regarding prices of the access and use of fixed telephone networks and fixed telephone service, comprised in article 34 of the Regulation for the Operation of Fixed Telephone Service, approved by Decree-Law no 474/99 of 8 November;

c) Those regarding the selection and pre-selection comprised in article 32 of Decree-Law no 415/98 of 31 December;

d) Those regarding sharing, comprised in article 17 of Decree-Law no 381-A/97 of 30 December, and in article 8 of the Regulation for the Operation of Telecommunications Public Networks, approved by Decree-Law no 290-A/99 of 30 July;

e) Those regarding network access, comprised in paragraph 2 of article 6 of Decree-Law no 415/98 of 31 December, and in article 33 of the Regulation for the Operation of Fixed Telephone Service, approved by Decree-Law no 474/99 of 8 November;

f) Those regarding interconnection, comprised in or resulting from the application of paragraph 1 of article 6 and of articles 8, 9, 10, 11, 12, 13, 15, 21, 22, 23 and 25 of Decree-Law no 415/98 of 31 December;

g) Those regarding unbundled access to the local loop, comprised in Regulation EC no 2887/2000 of the European Parliament and of the Council of 18 December.

3 – Without prejudice to the provision of article 43, legislative or administrative measures that force operators, when granting access or interconnection, to provide different conditions to different undertakings for equivalent services and or that impose obligations that are not related with the access and interconnection services effectively provided, in this case without prejudice to the conditions set out in articles 27, 32 and 34, shall not be maintained.

Article 123

Transitory rules

1 – Until such time as the Code of Administrative Courts Procedure enters in force, the regime of litigious impugnation currently in force shall apply, without prejudice to the competence of commerce courts.

2 – Municipalities shall approve the percentage to be applied for the year 2004, as set out in point b) of paragraph 2 of article 106, within 90 days from the publication of the present law.

3 – The NRA shall publish, within a period not exceeding 60 days following the publication of the present law, a regulation defining the procedure to be adopted by undertakings providing publicly available electronic communications networks and services at a fixed location, as regards the monthly collection and delivery, to municipalities, of revenues which result from the application of the MFRW.

Article 124

Concessionaire

1 – The regime in the present law shall apply to the concessionaire of the telecommunications public service, under the terms of paragraph 3 of article 21.

2 – The convention of universal service prices, concluded pursuant to Decree-Law no 458/99 of 5 November, shall remain in force until the implementation of the regime provided for in article 93 and at the latest until 31 December 2003.

3 – In the event the regime provided for in article 93 is not implemented by 31 December 2003, the rules for price setting comprised in the convention shall remain in force up to the said implementation.

Article 125

Regulations

1 – It is incumbent upon the NRA to publish the regulations necessary for the application of the present law, namely those concerning matters referred to in paragraph 1 of article 21, paragraph

2 of article 27, paragraph 2 of article 32, paragraph 2 of article 34, paragraph 1 of article 35, paragraph 2 of article 40, paragraph 5 of article 54, paragraph 4 of article 84, paragraphs 2 and 4 of article 92 and paragraph 4 of article 108, without prejudice to the statutory powers of the NRA to issue regulations where necessary for the exercise of its assignments.

2 – Without prejudice to the preceding paragraph, all measures and determinations adopted by the NRA pursuant to legislation repealed by the present law shall remain in force.

Article 126

Calculation of time limits

The rules comprised in article 72 of the Code of Administrative Procedure shall apply to the calculation of time limits provided for in the present law.

Article 127

Repealing provision

1 – The following statutory instruments are hereby repealed:

a) Law no 91/97 of 1 August, as amended by article 1 of Law no 29/2002 of 6 December, except for paragraphs 2 and 3 of article 12;

b) Decree-Law no 230/96 of 29 November;

c) Decree-Law no 241/97 of 18 September;

d) Decree-Law no 381-A/97 of 30 December;

e) Decree-Law no 415/98 of 31 December;

f) Decree-Law no 290-A/99 of 30 July, with the amendments introduced by Decree-Law no 249/2001 of 21 September;

g) Decree-Law no 290-B/99 of 30 July;

h) Decree-Law no 290-C/99 of 30 July;

i) Decree-Law no 458/99 of 5 November;

j) Decree-Law no 474/99 of 8 November, with the amendments introduced by Law no 95/2001 of 20 August;

l) Decree-Law no 287/2001 of 8 November;

m) Decree-Law no 133/2002 of 14 May.

2 – The telephone service shall be excluded from the scope of application of Law no 23/96 of 26 July and of Decree-Law no 195/99 of 8 June.

3 – The concessionaire of the telecommunications public service shall be excluded from the scope of application of point e) of paragraph 1 of article 7 of Decree-Law no 555/99 of 16 December, as amended by Decree-Law no 177/2001 of 4 June.

4 – Administrative Rule no 791/98 of 22 September, approved pursuant to Decree-Law no 241/97 of 18 September, shall remain in force.

Article 128

Entry into force

1 – The present law shall enter into force on the day following that of its publication.

2 – The MFRW, provided for in article 106, shall enter into force 90 days after the publication of the present law.

^(*) Rectified by Statement no. 32-A/2004, published on 10 April 2004.

^(**) Amended by Decree-Law no. 176/2007 of 8 May.

ANNEX

Service quality parameters

Parameters regarding time of supply and service quality, definitions and methods provided for in articles 40 and 92.

Parameter ⁽¹⁾	Definition	Measurement method
Supply time for initial network connection	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault rate per access line	ETSI EG 201 769-1	ETSI EG 201 769-1
Unsuccessful calls ⁽²⁾	ETSI EG 201 769-1	ETSI EG 201 769-1
Call set-up time ⁽²⁾	ETSI EG 201 769-1	ETSI EG 201 769-1
Response time for operator services	ETSI EG 201 769-1	ETSI EG 201 769-1
Response time for directory enquiry services	ETSI EG 201 769-1	ETSI EG 201 769-1
Rate of coin and card operated public pay-telephones in working order	ETSI EG 201 769-1	ETSI EG 201 769-1
Bill correctness complaints	ETSI EG 201 769-1	ETSI EG 201 769-1

⁽¹⁾ Parameters must allow performance to be assessed at regional level [that is, not below level 2 of the Nomenclature of Territorial Units (NUTS) established by Eurostat].

⁽²⁾ Member States may decide not to require the maintenance of up-to-date information on the performance of these two parameters, in case there are data to establish that performance in this scope is satisfactory.

N.B. – The ETSI EG 201 769-1 version number is 1.1.1 (April 2000).

PROCESSING OF PERSONAL DATA AND PROTECTION OF PRIVACY IN THE ELECTRONIC COMMUNICATIONS SECTOR

Law no. 41/2004 of 18 August^{1 2}

CHAPTER I

Subject and scope

Article 1

Subject and scope of application

1 – The present law transposes to the national legal order Directive 2002/58/EC of the European Parliament and of the Council, of 12 July, concerning the processing of personal data and the protection of privacy in the electronic communications sector, except for article 13 thereof, which concerns unsolicited communications.

2 – The present law shall apply to the processing of personal data within the context of publicly available electronic communications services and networks, specifying and complementing the provisions of Law no. 67/98 of 26 October (Law on the Protection of Personal Data).

3 – The provisions of the present law shall ensure protection of the legitimate interests of subscribers who are legal persons, to the extent that such protection is consistent with their nature.

4 – The exceptions to the application of the present law that are strictly necessary for the protection of activities concerning public security, defence, State security, and the prevention, investigation and prosecution of criminal offences shall be defined in special legislation.

Article 2

Definitions

1 – For the purposes of the present law, the following definitions shall apply:

a) «Electronic communication» means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service;

b) «Subscriber» means any natural person or legal entity who or which is party to a contract with an undertakings providing publicly available electronic communications networks and/or services for the supply of such services;

c) «User» means any natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to this service;

d) «Traffic data» means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;

¹ This is not an official translation of the law.

² Law no. 41/2004 of 18 August, published in *Diário da República*, no. 194, I Series - A, of 18 August 2004.

e) «Location data» means any data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a subscriber or of any user of a publicly available electronic communications service;

f) «Value added service» means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof;

g) «Call» means a connection established by means of a publicly available telephone service allowing two-way communication in real time.

2 – From point a) of the preceding paragraph shall be excluded all information conveyed as part of a broadcasting service to the general public over an electronic communications network, which cannot be related to the subscriber of an electronic communications service or to an identifiable user receiving the information.

CHAPTER II

Security and confidentiality

Article 3

Security

1 – Undertakings providing networks and undertakings providing electronic communications services shall work in conjunction in order to take the appropriate technical and organisational measures to safeguard security of their services and, if necessary, the security of the network itself.

2 – The measures referred to in the preceding paragraph shall be appropriate to the prevention of risks, having regard to the proportionality of costs of their implementation and the state of technological development.

3 – In case of a particular risk of a breach of the security of the network, undertakings providing publicly available electronic communications service shall inform the subscribers thereof of such risk, free of charge, as well as of any possible remedies to avoid it, including an indication of the likely costs involved.

Article 4

Inviolability of electronic communications

1 – Undertakings providing electronic communications networks and/or services shall ensure the inviolability of communications and the related traffic data by means of a public communications networks and publicly available electronic communications services.

2 – Listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users is prohibited, without the prior and explicit consent of the users concerned, except for cases provided for in the law.

3 – The provision in the present article shall not affect any legally authorised recording of communications and the related traffic data, when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction, nor of any other communication made in the scope of a business relationship, provided that the data holder has been informed thereof and given his consent thereto.

4 – Recordings of communications by and for public services intended to provide for emergency situations of any nature shall be authorized.

Article 5

Storage and access to information

1 -- The use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or of any user shall only be allowed where the following conditions have been met:

- a) The subscriber or user concerned has been provided with clear and comprehensive information, namely about the purposes of the processing, in accordance with the provisions laid down in the Law on the Protection of Personal Data;
- b) The right to refuse such processing has been offered to the subscriber or user.

2 – The provision of the preceding paragraph and of paragraph 1 of article 4 shall not prevent any automatic, intermediate and transient storage or access strictly necessary in order to:

- a) Carry out or facilitate the transmission of a communication over an electronic communications network;
- b) Provide a service in the scope of the information society that has been explicitly requested by the subscriber or by any user.

Article 6

Traffic data

1 – Without prejudice to the following articles, traffic data relating to subscribers and users which have been processed and stored by undertakings providing electronic communications networks and/or services shall be erased or made anonymous where they are no longer needed for the purpose of the transmission of a communication.

2 – The processing of traffic data necessary for the purposes of subscriber billing and interconnection payments is permitted, namely:

- a) Number or identification, address and type of station of the subscriber;
- b) Total number of units to be charged for the accounting period, as well as the type, starting time and duration of the calls made and/or the data volume transmitted;
- c) Date of the call or service and called number;
- d) Other information concerning payments such as advance payment, payments by instalments, disconnection and reminders.

3 – The processing referred to in the preceding paragraph shall be permissible only up to the end of the period during which the bill may lawfully be challenged or the payment be pursued.

4 – Undertakings providing electronic communications services may process the data referred to in paragraph 1 to the extent and for the duration necessary for the purposes of marketing electronic communications services or for the provision of value added services, provided that the subscriber or user to whom the data relate has given thereto his prior consent, which may be withdrawn at any time.

5 – For the purposes mentioned in paragraph 2 and, prior to obtaining consent from subscribers or users, for the purposes mentioned in paragraph 4, undertakings providing electronic communications services shall provide them accurate and full information on the types of traffic data which are processed, the purposes and the duration of such processing, as well as on a possible transmission to a third party for the purpose of providing the value added service.

6 – The processing of traffic data shall be restricted to workers and employees of undertakings providing electronic communications networks and/or publicly available services who are responsible for handling billing or traffic management, customer enquiries, fraud detection, marketing publicly available electronic communications services or providing a value added service, and shall be restricted to what is necessary for the purposes of such activities.

7 – The preceding paragraphs shall apply without prejudice to the possibility for courts or other competent bodies to be informed of traffic data, in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes.

Article 7

Location data

1 – Where location data other than traffic data, relating to subscribers or users of public communications networks or publicly available electronic communications services, are processed, such data may only be processed when they are made anonymous.

2 – The record, processing and transmission of location data to bodies with legal competence to deal with emergency calls, for the purpose of responding to such calls, is permitted.

3 – The processing of location data shall also be permitted to the extent and for the duration necessary for the provision of a value added service, provided that the prior consent of the subscribers or users has been given.

4 – Undertakings providing publicly available electronic communications services shall, namely, inform the users or subscribers, prior to obtaining their consent, of the type of location data which will be processed, of the duration and purposes of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service.

5 – Undertakings providing publicly available electronic communications services shall guarantee subscribers and users the possibility, using a simple means and free of charge:

a) To withdraw at any time their consent previously given for the processing of location data referred to in the preceding paragraphs;

b) To temporarily refuse the processing of such data for each connection to the network or for each transmission of a communication.

6 – Processing of location data shall be restricted to workers and employees of undertakings providing electronic communications networks and/or publicly available services or of the third party providing the value added service, and shall be restricted to what is necessary for the purposes of the referred activity.

Article 8

Itemised billing

1 – Subscribers shall have the right to receive non-itemised bills.

2 – Undertakings providing electronic communications networks and/or publicly available services shall take appropriate measures in order to reconcile the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers, namely by submitting proposals to the Comissão Nacional de Protecção de Dados/National Commission for Data Protection regarding means which allow anonymous or strictly private access to publicly available electronic communications services to subscribers.

3 – The approval on the part of the Comissão Nacional de Protecção de Dados/National Commission for Data Protection as regards the preceding paragraph shall be compulsorily subject to the prior opinion thereto on the part of the Autoridade Nacional de Comunicações (ICP – ANACOM).

4 – Calls that are free of charge to the calling subscriber, including calls to emergency services or helplines, are not to be identified in the calling subscriber's itemised bill.

Article 9

Identification of calling line and connected line

1 – Where presentation of calling line identification is offered, undertakings providing publicly available electronic communications services shall offer the calling subscribers, on a per-line basis, and the calling remaining users on a per-call basis, the possibility, using a simple means and free of charge, of preventing the presentation of the calling line identification.

2 – Where presentation of calling line identification is offered, undertakings providing publicly available electronic communications services shall offer the called subscriber the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls.

3 – Where presentation of calling line identification is offered prior to the call being established, undertakings providing publicly available electronic communications services shall offer the called subscriber the possibility, using a simple means, of rejecting non-identified incoming calls.

4 – Where presentation of connected line identification is offered, undertakings providing publicly available electronic communications services shall offer the called subscriber the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.

5 – The provision of paragraph 1 of the present article shall also apply with regard to calls to countries outside the European Union originating in national territory.

6 – The provisions of paragraphs 2, 3 and 4 shall also apply to incoming calls originating in countries outside the European Union.

7 – Undertakings providing electronic communications networks and/or publicly available services shall provide the public, especially subscribers, with transparent and up-to-date information on the possibilities referred to in the preceding paragraphs.

Article 10

Exceptions

1 – Undertakings providing electronic communications networks and/or publicly available services, where compatible with the principles of necessity, appropriateness and proportionality, shall cancel, for a period of time not exceeding 30 days, the elimination of the presentation of the calling line identification, on a written and duly substantiated request from a subscriber who wishes to determine the origin of non-identified calls that upset the peace of the family or the intimacy of private life, in which case the telephone number of calling subscribers who have prevented the line identification shall be recorded and made available to the called subscriber.

2 – In the cases provided for in the preceding paragraph, the cancellation of the elimination of the presentation of the calling line shall be preceded of a compulsory opinion on the part of the Comissão Nacional de Protecção de Dados/National Commission for Data Protection.

3 – Undertakings referred to in paragraph 1 shall also cancel, on a per-line basis, the elimination of the presentation of calling line as well as record and make available the location data of a subscriber or user, in the case provided for in paragraph 2 of article 7, in order to make available such data to bodies with legal competence to receive emergency calls for the purpose of responding to such calls.

4 – In the cases provided for in the preceding paragraphs, prior information shall be compulsorily transmitted to the holder of the referred data, on the transmission thereof, to the subscriber who required them pursuant to paragraph 1 or to the emergency services pursuant to paragraph 3.

5 – The information duty regarding data holders shall be performed through the following means:

a) In the cases mentioned in paragraph 1, through the broadcast of an automatic recording before the call is established, that informs the data holder that, from that moment and for the set period of time, his telephone number ceases to be confidential concerning calls to the subscriber who requested the number identification;

b) In the cases mentioned in paragraph 3, through the inclusion of general contractual terms in contracts signed between subscribers and undertakings providing electronic communications networks and/or services, or through explicit notification given to subscribers of contracts already signed, which allow the transmission of that information to emergency services.

6 – The record and notification referred to in paragraphs 1 and 3 shall be disclosed to the public and the use thereof shall be restricted to the intended purposes.

Article 11

Automatic call forwarding

Undertakings providing electronic communications networks and/or publicly available services shall ensure that any subscriber has the possibility, using a simple means and free of charge, of stopping automatic call forwarding by a third party to the subscriber's terminal equipment.

Article 12

Digital and analogue exchanges

1 – The provisions of articles 9, 10 and 11 shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

2 – It is incumbent upon ICP – ANACOM, as national regulatory authority, to confirm cases where it is technically impossible or which require a disproportionate economic effort to fulfil the requirements of articles 9, 10 and 11 of this law, and to notify this fact to the Comissão Nacional de Protecção de Dados/National Commission for Data Protection, which shall notify the European Commission thereof.

Article 13

Directories of subscribers

1 – Subscribers shall be informed, free of charge and before the respective data are included in printed or electronic directories, available to the public or obtainable through directory enquiry services, about:

- a) The intended purposes of such directories;
- b) Any further usage possibilities based on search functions embedded in electronic versions of the directories.

2 – Subscribers shall be given the opportunity to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purposes of the directories, as determined by the provider of the directories.

3 – Subscribers shall be given the opportunity to verify, correct, alter or withdraw the data included in the referred directories, free of charge.

4 – Additional consent shall be asked of the subscribers for any purpose of a public directory other than the search of contact details of persons on the basis of their name and, where necessary, a minimum of other elements of identification.

CHAPTER III

Sanctioning regime

Article 14

Breaches

1 – The following irregularities shall be deemed as breaches liable to a fine from €1500 to €25000:

- a) Non-compliance with the security standards imposed pursuant to article 3;
- b) Violation of the confidentiality duty, the prohibition of interception or surveillance of communications and the related traffic data provided for in article 4;
- c) Non-compliance with the conditions concerning storage and access to information provided for in article 5.

2 – The following irregularities shall be deemed as breaches liable to a fine from €500 to €20000:

- a) Non-compliance with the conditions concerning processing and storage of traffic data and location data provided for in articles 6 and 7;
- b) Violation of obligations provided for in paragraphs 1, 2 and 4 of article 8 and in articles 9 to 11;
- c) The creation, organization or updating of directories of subscribers in violation of article 13.

3 – Breaches provided for in paragraph 1 shall be liable to fines from €5000 to €5000000 and those provided for in paragraph 2 shall be liable to fines from €2500 to €2500000, where they have been performed by legal persons.

4 – The attempt and negligence shall be punishable.

Article 15

Procedure and application of fines

1 – It is incumbent upon the Comissão Nacional de Protecção de Dados/National Commission for Data Protection to initiate, examine and close breach proceedings as well as to apply fines on grounds of non-compliance with the provisions of paragraph 3 of article 4, of articles 5 and 6, of paragraphs 1 to 5 of article 7, of paragraphs 2 and 4 of article 8, of paragraphs 1 and 2 of article 10 and of article 13.

2 – It is incumbent upon the Board of Directors of ICP – ANACOM to pursue and close breach proceedings and to apply the respective fines as regards the remaining offences provided for in the preceding article, the examination thereof being incumbent upon the respective services.

3 – The competences provided for in the preceding article may be delegated.

4 – The amount of fines applied shall revert to the State at 60% and at 40% to the Comissão Nacional de Protecção de Dados/National Commission for Data Protection or to ICP – ANACOM, as appropriate.

Article 16

Subsidiary legislation

The sanctioning rules comprised in articles 33 to 39 of the Law for the Protection of Personal Data shall apply in all matters not provided for in the present law.

CHAPTER IV

Final and transitory provisions

Article 17

Technical features and standardization

1 – The compliance with the provisions of this law shall not determine that mandatory requirements for specific technical features are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment within the countries of the European Union.

2 – From the preceding paragraph are excepted the elaboration and issue of specific technical features necessary to the implementation of the present law, which shall be notified to the European Commission in accordance with the procedures provided for in Decree-Law no. 58/2000 of 18 April.

Article 18

Transitory provisions

1 – The provision of article 13 shall not apply to editions of directories already produced or placed on the market in printed or off-line electronic form before the present law enters into force.

2 – Where the personal data of subscribers to publicly available fixed or mobile voice telephony services have been included in a public subscriber directory, in conformity with prior legislation and before the entry into force of the present law, the personal data of such subscribers may remain included in that public directory in its printed or electronic versions.

3 – In the case provided for in the preceding paragraph, subscribers shall have the right to withdraw their personal data from the public directory in consideration, after having received complete information about purposes and options thereof, in accordance with article 13.

4 – The information referred to in the preceding paragraph shall be conveyed to subscribers within at the most six months from the date of entry into force of the present law.

Article 19

Repeal

Law no. 69/98 of 28 October is hereby repealed.

Article 20

Entry into force

The present law shall enter into force on the day following that of its publication.



BASES OF THE CONCESSION OF THE TELECOMMUNICATIONS PUBLIC SERVICE

Decree-Law no. 31/2003 of 17 February^{1 2}

In 1994, Portugal Telecom, S.A. was formed, by means of a merger of Telecom Portugal, S.A., Telefones de Lisboa e Porto, S.A. and Teledifusora de Portugal, S.A. Subsequently, the bases of the concession of the telecommunications public service were approved, by Decree-Law no. 40/95 of 15 February, the respective concession contract having been entered into with Portugal Telecom, S.A., valid until 2025 (“Concession Contract”).

In the meanwhile, in the framework of the restructuring operation of the Portugal Telecom Group, the newly created society – PT Comunicações, S.A. – took over the set of rights and obligations of the concessionaire of the telecommunications public service, through the transfer of the contract from the concessionaire to this society, the transfer being approved pursuant to Decree-Law no. 219/2000 of 9 September.

Thus, as from 1995, a establishing and regulating framework for the concessionaire action was established, regarding on the one hand the provision of the concessionary telecommunications public services, and on the other hand the operation of infrastructures attached to the provision of those services, namely the telecommunications basic network (“Basic Network”), which at the time represented an asset belonging to the public domain of the state.

On the expiry of seven years from the date of the signature of the concession contract, and in a context of the full liberalisation and open competition of the global communications sector, many transformations have taken place in the national and international arena.

In fact, the telecommunications liberalisation process having come to an end, the status of an asset belonging to the public domain of the state is no longer justified, having regard namely to the fact that the access to this network on the part of all telecommunications operators is duly ensured by the regime of open network provision, to which the concessionaire is bound under the law and the concession contract itself.

In this respect, the deassignment of the basic network from public domain on the part of the State, operated pursuant to Law no. 29/2002 of 6 December, and likewise its disposal in favour of the concessionaire, represents not only a natural evolution of the national telecommunications market, but also a measure of sound financial management, since it gives the State the possibility to earn substantial as well as immediate revenue, regarding the payment of a rent up to 2025 for the concession of the basic network to PT Comunicações, in accordance with the respective Concession Contract.

Being the basic network the support of the provision of the telecommunications universal service, and since PT Comunicações was designated, pursuant to Decree-Law no. 458/99 of 5 November, as the provider of the universal service, being also assigned the provision of further public services, it is essential that the concession contract is amended so as to adapt it, namely, to the new network ownership regime, while avoiding any disturbance either to the essential core

¹ This is not an official translation of the law.

² Decree-Law no. 31/2003 of 17 February, published in *Diário da República*, no. 40, I Series - A, of 17 February 2003.

of the rights and obligations entered into by the concessionaire in the course of the concessionary activities, or to the financial equation on which the concession contract was based from the beginning.

The provision of the telecommunications universal service was ensured in strict compliance with the applicable legal standards.

With the amending agreement of the concession contract, the bases of which are published in annex with this statutory instrument, the Government expects to have achieved a contract not only adapted to the regulatory environment of the sector concerned, but also granted with the degree of flexibility necessary to the operation of the concessionaire, in a sector characterized by a strong competitiveness and dynamism. This was attained without disturbing the core of the interests of the State, the rights and obligations of the concessionaire, the economic balance of the concession contract, the commitments entered into by the State with the shareholders of Portugal Telecom and the general market at the time of its privatisation, as well as the interests of the remaining market operators and consumers.

The bodies representing users were consulted, pursuant and for the purposes of Laws no. 23/96 of 26 July and no. 24/96 of 31 July.

Therefore:

Pursuant to paragraph 1a) of article 198 of the Constitution, the Government hereby decrees the following:

Article 1

Amendment of the bases of the concession

1 – The bases of the concession of the telecommunications public service, published in annex to Decree-Law no. 40/95 of 15 February, are hereby amended, being replaced by the bases of concession in annex to this statutory instrument, of which they form integral part.

2 – All legislative references to the bases of the concession in annex to Decree-Law no. 40/95 of 15 February shall be considered to be made to the bases of concession in annex to this statutory instrument.

Article 2

Dismissal and burdening of the basic network

1 – The dismissal of the telecommunications basic network by the concessionaire is authorized, without prejudice to its attachment to the provision of the universal service.

2 – The concessionaire is bound to maintain the ownership of the basic network for the period in which the concession remains in force, save for the sub-concession cases permitted pursuant to the bases mentioned in article 1.

3 – The concessionaire, or the owner of the basic network, where the entity is not the same, shall report to the member of the Government responsible for the communications sector all legal operations that result in the dismissal or burdening of the basic network within ten days from the respective conclusion.

4 – The State may supervise the basic network, and for this purpose it shall be granted, namely, free access to all infrastructures, assets and documents concerning the mentioned network.

Article 3

Maritime mobile service

The provision of the maritime mobile service shall be ensured by the concessionaire on a transitional basis, up to the respective transfer to a different entity, which shall take place at the most within one year from the date of publication of this statutory instrument.

Article 4

Repealing provision

Decree-Law no. 40/95 of 15 February is hereby repealed.

Article 5

Entry into force

This statutory instrument shall enter into force on the day following its publication.

ANNEX

Bases of the concession telecommunications public service

CHAPTER I

General Provisions

Article 1

Definitions

For the purposes of the provisions of the present bases:

- a) “Granting authority” shall mean the Portuguese State;
- b) “Concessionaire” shall mean PT Comunicações, S.A.;
- c) “ICP – ANACOM” shall mean ICP – Autoridade Nacional de Comunicações;
- d) “Telecommunications basic network” shall mean the telecommunications public network as defined in article 12 of Law no. 91/97 of 1 August;
- e) “Transport and broadcasting infrastructures” shall mean the infrastructures engaged in the emission, reception, transmission and distribution of broadcasting telecommunications;
- f) “Integrated Services Digital Network (ISDN)” shall mean the set of telecommunication infrastructures that, being an integral part of the telecommunications basic network, where it is fundamentally intended to provide the telephone fixed service, enables the provision of digital

connections between two terminal points which offer a large range of telecommunications services, in compliance with the relevant recommendations of the International Telecommunications Union (ITU), namely, ITU Recommendation I.112;

g) "Fixed telephone service" shall mean the provision to the general public of direct transport of real-time speech, at fixed locations, such that any user may use equipment connected to a network termination point to communicate with another termination point;

h) "Fixed telex service" shall mean the provision of the addressed transport of telex messages, both to and from terminal points of the telecommunications basic network, in compliance with the relevant ITU Recommendations, namely Recommendation F.60, using the international alphabet no. 2 included in Recommendation S.1 and transmission at 50 Baud, such that any user may use equipment connected to his network termination point to communicate with another termination point;

i) "Leased lines" shall mean the telecommunications facilities of the public network which provide for transparent transmission capacity between network termination points and which do not include switching functions which the user can control;

j) "Fixed switched data transmission service" shall mean the provision of addressed data transport, both to and from the subscriber fixed access system, such that any user may use equipment connected to his network termination point to communicate with another termination point;

l) "Telegraph service" shall mean the provision of a reception, transmission, reproduction and delivery service to the message addressee, in compliance with the relevant ITU Recommendations;

m) "Universal service" shall mean the set of specific obligations associated with the provision of telecommunications services of addressed public use, aiming for the fulfilment of the communication needs of the population and of social and economic activities throughout the national territory, in terms of equality and maintenance, and by means of appropriate remuneration conditions, having regard to the demands of a harmonious and balanced economic and social development;

n) "User" shall mean any natural or legal person to whom the services provided by the concessionaire within the scope of the concession contract are made available;

o) "Case of force majeure" shall mean any unexpected and insuperable event, the effects of which are produced irrespective of the will or personal circumstances of the parties, namely situations of natural disaster, acts of war, whether declared or not, subversion, alteration of public order, economic blockage and fire.

CHAPTER II

Object and scope

Article 2

Object

1 – The concession aims for:

- a) The provision of the telecommunications universal service, within the scope defined in Decree-Law no. 458/99 of 5 November;
- b) The provision of the following services:
 - 1) Fixed telex service;
 - 2) Fixed switched data transmission service;
 - 3) Broadcasting and distribution service of the telecommunications broadcast signal;
 - 4) Telegraph service.

2 – The concession aims further for:

- a) The development and operation of infrastructures which integrate the telecommunications basic network, in articulation with the territorial planning and the needs of citizens regarding security and civil protection;
- b) The establishment, management and operation of the transport and broadcasting infrastructures of the telecommunications broadcast signal.

3 – Without prejudice to the provisions of the present bases, the operation of the telecommunications basic network shall be ruled by the provisions of the Regulation of the Telecommunications Basic Network Operation, as well as by further legislation applicable to the communications sector.

4 – The provision of the fixed switched data transmission service may be ensured indirectly by the entity entitled for this purpose under the law.

5 – In addition to the provision of paragraph 1, the granting authority may assign the concessionaire the task of the operation of further telecommunications services of public use, where the public interest, duly acknowledged, so justifies, under conditions to be agreed between the parties, which shall be integrated as amendments to the concession contract.

Article 3

Other services and activities of the concessionaire

1 – The concessionaire may provide any telecommunication services other than those in article 2, as well as carry out any complementary or accessory activities relating to the aim of the concession, either directly or through the setting up or shareholding of a partnership.

2 – The provision of services and the activities mentioned in the preceding paragraph shall not disturb the compliance of the concessionaire with the obligations laid down in the concession

contract and, where appropriate, shall be ruled by the respective qualifying titles and further applicable standards.

CHAPTER III

Territorial scope and concession period

Article 4

Scope and concession period

- 1 – The concessionaire shall pursue its activity on national territory, ensuring international connections.
- 2 – The concession contract expires on 20 March 2025.

Article 5

Means engaged in the concession

- 1 – The concessionaire is bound by the concession contract to engage in the concession the infrastructures that integrate the telecommunications basic network.
- 2 – The assets that, at a given time, are deemed essential to the provision of the concessionary services shall be engaged in the concession.
- 3 – The engaging in the concession of the infrastructures and further assets referred to in the preceding paragraphs shall be without prejudice to the possibility of the respective dismissal, substitution and/or burdening, in so far as the provision of concessionary services is not affected.

CHAPTER IV

Obligations of the concessionaire

Article 6

General obligations of the concessionaire

Pursuant to the concession contract, the concessionaire is assigned the following general obligations:

- a) To comply with national law in force, in the applicable parts, orders, injunctions, commands, directives and instructions that, under the law, are issued by the competent authorities, as well as with determinations that, under the law or the concession contract, are issued by the granting authority or ICP – ANACOM;
- b) To provide the concessionary services, ensuring their interoperability, continuity, availability, maintenance and quality;
- c) To guarantee and enforce the confidentiality of communications made through the services provided, as well as the inviolability of the support infrastructures;
- d) To comply with the numbering plan, under the terms set forth by ICP – ANACOM;

- e) To give leave and facilitate the supervision of the concession, on the part of the granting authority and ICP – ANACOM, namely by promoting the access to the respective documentation and premises;
- f) To make available and issue to ICP – ANACOM within the time limit and pursuant to the terms and conditions laid down, the information and statistical data deemed necessary for the supervision of the activities carried out within the scope of the concession or the development of the activity of the telecommunications market;
- g) To report to ICP – ANACOM any amendments to be included in the respective partnership agreement;
- h) To comply with the rules that may come into force in the future, even if the provisions arise from needs or demands of public use of any of the services provided, unforeseen at the time of the concession;
- i) To guarantee, in a suitable and proper way, the functioning of telecommunication services during crisis, emergency or war situations;
- j) To guarantee the provision of services included in the concession throughout national territory, without displaying any preference towards them nor discriminating any person, natural or legal, that requests them.

CHAPTER V

Infrastructures

Article 7

Telecommunications basic network

- 1 – The telecommunications basic network shall function as an open network, its use having to be ensured, in equal conditions, by all operators and providers of public use telecommunications.
- 2 – For the purposes of the preceding paragraph, the following shall be ensured:
 - a) The access and interconnection in conditions of equality, transparency and non-discrimination, under the law;
 - b) The availability of leased lines throughout the national territory, necessary to the provision of telecommunication services of public use;
 - c) The access, under the law, to ducts and masts, further equipment and facilities, provided for remuneration to be agreed between the parties or, in the absence of an agreement, to be determined by ICP – ANACOM.
- 3 – It is incumbent upon the concessionaire to maintain the basic network infrastructures in good working order, safely and well maintained, as well as to watch over its functioning and appropriate operation.
- 4 – It is also incumbent upon the concessionaire to develop the infrastructures of the telecommunications basic network, in order to ensure quality levels appropriate to the services they support.

Article 8

Transport and broadcasting infrastructures

The following shall be obligations upon the concessionaire, in the scope of the establishment, management and operation of the transport and broadcasting infrastructures of broadcasting telecommunications:

- a) To ensure that, under the law, the concessionary entities of public service of radio and television broadcasting, as well as further entities with licenses for the exercise of radio and television broadcasting, shall have access in conditions of equality and non-discrimination, to the networks of signal transport and broadcast necessary for the respective coverage;
- b) To develop the infrastructures referred to in the preceding paragraph in qualitative and quantitative terms, in order to guarantee the contracted quality levels.

CHAPTER VI

Provision of the telecommunications universal service

Article 9

Telecommunications universal service

It is incumbent upon the concessionaire to provide the telecommunications universal service, in compliance with the provisions of Decree-Law no. 458/99 of 5 November and further applicable law.

CHAPTER VII

Provision of other telecommunications services

Article 10

Fixed telex service, fixed switched data transmission service and telegraph service

It is incumbent upon the concessionaire, in the scope of the fixed telex service, fixed switched data transmission service and telegraph service, to guarantee the provision of those services, ensuring their interoperability, continuity, availability, maintenance and quality, in compliance with this concession and remaining legislation in force.

Article 11

Broadcasting and distribution service of the telecommunications broadcast signal

The following shall be specific obligations upon the concessionaire, in the scope of the provision of the broadcasting and distribution service of the telecommunications broadcast signal:

- a) To ensure, in conditions of equality and non-discrimination, the broadcasting of the telecommunications broadcast signal to licensed operators that so request;
- b) To ensure the broadcasting of the television public service;

c) To guarantee, pursuant to applicable law, that signals are broadcasted to the respective operators, according to coverage phases and time limits.

Article 12

Services provided via ISDN

The access to services provided via ISDN shall be a specific obligation upon the concessionaire, using for the purpose a minimum set of essential offers and additional offers, under the terms to be established by ICP – ANACOM.

Article 13

Provisions available free of charge

1 – It is incumbent upon the concessionaire to ensure that final users are provided, free of charge, with:

- a) The access to repair and claim services;
- b) The periodic edition and distribution of subscriber directories of telephone and telex fixed services;
- c) Other provisions with interest for the general public or aimed at citizens with special needs, established as such in the universal service convention.

2 – In addition to the provision of the preceding paragraph, it is incumbent upon the concessionaire to provide, free of charge, the telecommunications service of public use, as regards the concession, to the President of Republic, the President of the Assembly of the Republic, the Prime Minister, the President of the Supreme Court of Justice, the President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the Supreme Military Court, the President of the Court of Auditors, the Government members, the Attorney-General of the Republic and the Ombudsman.

CHAPTER VIII

Rights of the concessionaire

Article 14

Rights of the concessionaire

1 – The concession contract empowers the concessionaire to provide the concessionary services and to develop the activity of telecommunications fixed network operator.

2 – The following constitute rights of the concessionaire:

- a) To charge the price of services provided;
- b) To occupy and use streets, roads, tracks, watercourses, land along railroads and lines of communication of public domain, as well as to perform the necessary works or repairs for the implantation of infrastructures of the basic network of telecommunications or to the crossing of

the different parts of infrastructures or equipment of the mentioned network, as well as of the infrastructures engaged in the concession, pursuant to article 13 of Law 91/97 of 1 August and further applicable law, with exemption of municipal licence;

c) To request compulsory purchases in the public interest, to request the constitution of administrative uses, to establish protection zones and to have access to public or private land and buildings, where deemed necessary for the compliance with the concession obligations and in conformity with legislation in force;

d) To use radio frequencies and numbering resources, or others, deemed necessary for the provision of services as regards this concession and which have been assigned by ICP – ANACOM.

Article 15

Price regime for the telecommunications universal service

The price regime for the telecommunications universal service shall be ruled by the provisions of Decree-law no. 458/99 of 5 November.

Article 16

Price regime for other services included in the concession

1 – The price regime for the fixed telex service, the telegraph service and the mobile maritime service shall comply with the principles of transparency, non-discrimination and cost orientation, ensuring accessibility for end-users.

2 – ICP – ANACOM shall ensure the application of the principles mentioned in the preceding paragraph, and for this purpose may determine a system of maximum prices or similar.

3 – The price regime for the access to the network of the television signal transport and broadcasting shall comply with the principles of transparency, non-discrimination and cost orientation, being incumbent upon ICP – ANACOM to ensure the respect for these principles, having heard the Institute for Social Communication.

Article 17

Quality of other services included in the concession

1 – The concessionaire shall provide the telex, telegraph and mobile maritime services according to indicators relating to quality service and performance aims, to be settled by ICP – ANACOM, having regard namely to criteria such as user demand satisfaction and geographical dispersion.

2 – The concessionaire shall send every three months to ICP – ANACOM, the particulars that shall enable the efficient assessment of the indicators relating to quality service and performance aims, according to methods and technical means defined for the respective determination and set as such pursuant to the preceding paragraph.

Article 18

Analytical accounts

1 – The concessionaire shall keep a system of analytical accounts, appropriate to the tariff principles determined in this concession, as well as in further applicable legislation.

2 – It is incumbent upon ICP to approve the methodology to be used in the implementation and use of the system mentioned in the preceding paragraph, as well as to assess and declare its compliance.

3 – Where the concessionaire provides other services in a direct way, pursuant to paragraph 1 of article 3, it shall ensure the adequate accounts segregation of revenues and costs, as well as connected assets and liabilities.

Article 19

Inventory of the concessionaire

1 – The concessionaire shall to prepare and keep updated an inventory of the assets engaged in the concession, which shall be sent to ICP – ANACOM every year, duly certified by an auditor acceptable to the latter, for purposes of approval.

2 – Where the inventory is not approved, the process shall be submitted to a court of arbitration.

3 – Without prejudice to other applicable penalties, where the provision of paragraph 1 is not complied with, the granting authority is entitled to make an inventory of the assets engaged in the concession, the concessionaire being charged with the costs incurred.

CHAPTER IX

Negative operating margins

Article 20

Compensation for negative margins of the universal service

The negative operating margins relating to the provision of the telecommunications universal service, where they exist, shall be compensated pursuant to the provisions of Decree-Law no. 458/99 of 5 November.

Article 21

Compensation mechanisms for the negative operating margins resulting from the provision of other telecommunications services integrated in the concession

1 – Having regard to the special nature of the fixed telex service, the telegraph service, the television broadcasting service and the mobile maritime service, the negative operating margins possibly resulting from the compliance with obligations established in the concession contract shall be compensated every year, as to the provision of these services, through a direct compensation of the part of the State.

2 – For the purposes of the provision of the preceding paragraph, the concessionaire shall present the negative operating margins resulting from the provision of the services mentioned in the preceding paragraph to ICP – ANACOM, who shall submit them to the Inspectorate-General for Finances, after an audit performed by an independent entity designated by the communications authority.

CHAPTER X

Intervention by third parties

Article 22

Intervention by third parties in the activity of the concessionaire

Without prejudice to the provision of the following article, the concessionaire is authorized to subcontract third parties to work or provide services that constitute or relate to the obligations assumed by the concessionaire pursuant to the concession contract.

Article 23

Sub-concession

1 – Subject to the prior consent of the granting authority, the concessionaire may grant a sub-license, in part or totally, regarding the operation of services this concession aims for.

2 – The consent of the granting authority is deemed to be implicitly given where it is not refused within 60 days from the date of the submission of the request.

Article 24

Position of the concessionaire in case of intervention by third parties

1 – In cases of intervention by third parties in the concession, provided for in articles 22 and 23, the concessionaire maintains its rights and is bound to the obligations resulting from the concession contract or applicable legislation, being responsible before the granting authority for the strict compliance with it.

2 – The exceptions and means of defence that result from the contractual relations established by the concessionaire pursuant to articles 22 and 23 of the concession contract cannot be invoked against the granting authority.

3 – The concessionaire is liable for the damages caused to third parties by the entities it engaged in the activities comprised in the concession, on the general basis of a principal - agent relationship.

CHAPTER XI

Supervision of the concession

Article 25

Supervision of the concession

1 – The supervision of the concession, including the supervision of the basic network, is incumbent upon the Ministry for Finance, through the Inspectorate-General for Finance, regarding financial issues, and upon the Ministry for the Economy, regarding remaining concerns, the competencies of whom shall be performed by ICP – ANACOM.

2 – For the purposes of the preceding paragraph, the concessionaire shall cooperate fully with the Inspectorate-General for Finance and ICP – ANACOM, granting free access to premises, equipments of any nature and all documentation and archives, giving all information and making available any particulars that are solicited, namely as regards statistical data and management records that have been used, and providing all the requested clarifications regarding these documents.

3 – At the request of ICP – ANACOM, in conformity with criteria of reasonableness and in the presence of representative of the concessionaire, tests may be performed with a view to assess not only the conditions of functioning, security and maintenance of the telecommunications basic network and the infrastructures engaged in the concession, but also the quality levels provided in the different services included in the concession.

4 – The determinations issued by ICP – ANACOM according to criteria of reasonableness, in the scope of the supervisory powers shall apply immediately and bind the concessionaire, without prejudice to the process of resolution of disputes provided for in article 38.

5 – ICP – ANACOM and its agents are subject to the requirement of confidentiality as to the collected information, namely the ones of a commercial nature, in the scope of the supervisory actions accomplished, and shall not use or disclose them for other purposes than the supervisory action or other deemed relevant under the law.

6 – Where the concessionaire does not comply with determinations issued by ICP – ANACOM in the scope of its supervisory powers, the communications authority may rectify the situation, either directly or through a third party, the concessionaire being charged with the costs incurred.

Article 26

Determinations subject to authorization

1 – The mergers and divisions are subject to the previous authorization of the granting authority, which is deemed to be implicitly given where it is not refused within 30 days from the date of the submission of the respective request.

2 – The authorization referred to in the preceding paragraph shall not be unreasonably refused.

CHAPTER XII

Collaboration between the parts

Article 27

Duty to collaborate

Pursuant to the concession contract, the parts shall comply with their commitment to cooperate and provide assistance upon a reasonable request, in order to ensure the development of the activities integrated in the concession.

CHAPTER XIII

Non-compliance with the concession contract

Article 28

Contractual fines

1 – Without prejudice to the situations of non-compliance that may lead to seizure or to the cancellation of the concession pursuant to articles 30 and 35, non-compliance on the part of the concessionaire of the obligations arising from the concession contract or determinations of the granting authority, issued pursuant to the law or the concession contract shall be liable to contractual fines not exceeding €500000, applied by ICP – ANACOM, updated every year by the consumer price index, according to the seriousness of infringements committed, the corresponding losses, as well as to the default of the concessionaire.

2 – The fine application shall be preceded of a hearing of the concessionaire, pursuant to article 100 of the Code of Administrative Procedure, approved by Decree-law no. 442/91 of 15 November.

3 – The fines referred to in paragraph 1 shall be applied following a deliberation of the board of administration of ICP – ANACOM, which shall be forwarded in writing to the concessionaire, and shall be effective regardless of any other formalities.

4 – The fines applied pursuant to this article shall revert to the State at 60% and to ICP – ANACOM at 40%.

5 – The payment of fines applied pursuant to this article shall not exempt the concessionaire of civil liability for losses and damages arising from the infringement.

Article 29

Non-contractual liability

The concessionaire is liable, under general law, for any damages caused to third parties in the carrying out of the activities constituting the aim of the concession, for default or for risk, the granting authority not accepting any responsibility in this scope.

Article 30

Seizure

1 – Where the concessionaire commits serious infringements of obligations arising from the concession contract, the granting authority may take over, by means of seizure, the performance of activities and the provision of services the concession aims for.

2 – The seizure may take place, namely, in any of the following situations:

a) Total or partial cessation or interruption of the performance of activities and the provision of services the concession aims for;

b) Serious deficiencies in the regular development of the activities and services the concession aims for, as well as situations of insecurity of people and goods;

c) Deficiencies in the general state of premises, infrastructures and telecommunications equipment which could threaten the maintenance and/or the quality of the provision of services the concession aims for.

3 – Where any situation arises leading to the seizure of the concession, pursuant to the previous paragraphs, the non-compliance rectification process, provided for in paragraphs 2 and 3 of article 35, duly adapted, shall be complied with.

4 – The seizure having taken place, the concessionaire shall bear all costs arising from the maintenance of services and the extraordinary expenditures necessary to the reestablishment of a normal operation.

5 – Having ended the reasons leading to the seizure, and where the granting authority finds it suitable, the concessionaire shall be notified to resume the operation of activities and services the concession aims for, within the established time limit.

6 – Where the concessionaire does not want to, or cannot, resume the concession, or having done so, serious deficiencies remain in the operation of the activities and services the concession aims for, the granting authority may determine the immediate cancellation of the contract.

Article 31

Force majeure

1 – Where cases of force majeure prevent the compliance with the obligations of any of the parts or force the suspension of the concessionary services, during the period the concession contract is in force, the corresponding obligations or contract shall be suspended, totally or in part, for the period corresponding to the duration of the case of force majeure, or the contract shall be revised by agreement, where appropriate.

2 – As soon as a party acknowledges a case of force majeure, it shall notify in written the other party, presenting the effects regarding the performance of the contract.

3 – Without prejudice to the possibility of an agreement, pursuant to paragraph 1, in a case of force majeure, the concessionaire shall provide for the functioning and maintenance of the telecommunications services, taking the necessary and appropriate steps for the purpose, namely in the scope of planning and prevention of operation and human resources.

Article 32

Cases of war or crisis

1 – Without prejudice to the provision of paragraph j) of article 6 and to the preceding paragraph, the granting authority, through the member of the Government responsible for the area of communications, has the power to manage and operate the services the concession aims for.

2 – During the period referred to in the preceding paragraph, the time limit for the concession stipulated in the contract is suspended, regarding all the aims of the concession.

CHAPTER XIV

Amendment and termination of contract

Article 33

Contract amendment

1 – During the period the concession contract is in force, where circumstances occur, the importance and effects of which may be considered as an irregular change of circumstances, pursuant to article 437 of the Civil Code, the parts shall revise the contract, in compliance with the principles of good faith and fairness.

2 – In the absence of an agreement between the parties concerning the contract amendment provided for in the preceding paragraph, within at the most 90 days from the notification of the changed circumstances from one of the parties to the other, the issue shall be submitted to a court of arbitration.

3 – Where the power provided in paragraph 2b) of article 14 is amended, it is incumbent upon the granting authority to compensate the concessionaire for the damages, costs or charges the concessionaire may bear as a result thereof.

Article 34

Contract termination

The concession shall terminate by means of an agreement between the granting authority and the concessionaire, cancellation, buy-back, or lapse of the respective period.

Article 35

Cancellation of the concession

1 – The granting authority may cancel the contract, without prejudice to the provision of paragraph 2, in cases of serious, continuous and non rectified or non rectifiable violation of the obligations of the concessionaire, namely where the following facts occur:

- a) non-compliance with the obligations of the concessionaire pursuant to the concession contract;
- b) violation of legislation applicable to the activity the concession aims for or of any of the clauses of the respective contract;

- c) dissolution of the concessionaire;
 - d) unreasonable and repeated opposition to the supervision and reiterated and unjustified breaking of the legitimate determinations of the granting authority and ICP – ANACOM;
 - e) refusal to maintain and repair the premises and equipment which are infrastructures integrated in the basic telecommunications network;
 - f) refusal or inability of the concessionaire to resume the concession operation pursuant to paragraph 4 of article 30, or having done so, the situations which led to the seizure persist;
 - g) unjustifiable failure to comply with a final judgment or arbitration award.
- 2 – Having occurred one of the non-compliance cases that, pursuant to paragraph 1, justify the cancellation of the concession, the granting authority shall notify the concessionaire to comply fully with its obligations and rectify or amend the consequences of the its acts, save for a non rectifiable violation, within a reasonable time limit.
- 3 – Where the concessionaire does not rectify or amend the consequences of the non-compliance under the terms established by the granting authority, the latter may cancel the contract through a notification sent to the concessionaire.
- 4 – The cancellation is incumbent upon the member of the Government responsible for the area of communications, and shall be effective through a notification sent to the concessionaire, regardless of any other formalities.
- 5 – Where the cancellation of the concession takes place, the concessionaire shall compensate the granting authority for all damages caused, in addition to other penalties provided for under the law or the contract.

• Article 36

• Concession buy-back

- 1 – The granting authority may buy back the concession where justified on grounds of public interest, through a notification sent to the concessionaire, one year ahead of time at the least, and as from 15 years after the beginning of the respective period.
- 2 – The granting authority, having lapsed one year from the buy-back notification, shall take upon itself all the powers and obligations the concessionaire had entered into prior to the date of notification, in order to ensure the development of activities and the provision of services the concession aims for, and also the ones entered into by the concessionaire subsequently to that date, as long as they have been previously authorized by the granting authority.
- 3 – Where the buy-back takes place, the concessionaire is entitled to an extraordinary compensation corresponding to the number of years that lack for the end of the concession, multiplied by the average of the net results of the five years prior to the buy-back notification.

Article 37

Reversion of assets and rights at the end of the concession

1 – At the end of the concession, the assets of the private domain of the State shall revert free of charge and automatically to the granting authority, being incumbent upon the concessionaire to hand them over in perfect functioning, maintenance and security conditions, without prejudice to the normal wearing out due to the use, and free from any burden or charges, the concessionaire being prevented from invoking liens on any ground.

2 – Where the reversion of assets to the granting authority cannot be processed in the conditions provided for in the preceding paragraph, the concessionaire shall compensate the granting authority, the compensation being estimated under the law.

3 – At the end of the concession, the granting authority shall perform an inspection of the assets mentioned in paragraph 1, with the presence of a representative of the concessionaire, in order to assess the preservation and maintenance thereof, after which a report shall be prepared.

CHAPTER XV

Resolution of disputes

Article 38

Process of resolution of disputes

1 – The conflicts that may arise between the parties concerning the application, interpretation or integration of omissions of the concession contract shall be settled by a court of arbitration, pursuant to the following article.

2 – In case any matter is referred to the process of resolution of conflicts, the concessionaire shall not be exempted from the prompt compliance with the provisions of these bases and the determinations of the granting authority communicated within its scope, including the ones issued after the mentioned process has been started, nor shall it interrupt in any way the development of the activities the concession aims for, which shall continue under the terms in force at the date the process started, until a final decision is given regarding the process of resolution of conflicts as to the matter concerned.

Article 39

Court of arbitration

1 – Any of the parties may refer the dispute to a court of arbitration comprising three members, one designated by each of the parties in the process and a third one chosen by agreement between the arbitrators designated by the parties.

2 – The party that refers a dispute to a court of arbitration pursuant to the preceding paragraph shall present its reasons and designate immediately its chosen arbitrator in the application for the constitution of a court of arbitration to be delivered to the other party, by the dispatch by

registered post, with a form for acknowledgment of receipt, the latter having to designate an arbitrator and to present defence within 20 working days from the reception of the application.

3 – The arbitrators designated pursuant to the preceding paragraph shall designate the third arbitrator within 10 working days from the designation of the arbitrator chosen by the respondent.

4 – In the absence of an agreement as to the designation of the third arbitrator, the choice shall be incumbent upon the president of the Lisbon Court of Appeal, at the request of any of the parties.

5 – The court of arbitration is constituted as from the date the third arbitrator accepts its designation and communicates this fact to the parties.

6 – The court of arbitration may be assisted by technical experts it deems suitable to designate, being advised in any case by individuals or entities with the appropriate judicial training in Portuguese Law.

7 – The court of arbitration shall judge according to the entitlement and its decisions shall be no longer subject to appeal, without prejudice to general law regarding the annulment of an arbitration award.

8 – The decisions of the court of arbitration shall represent the final decision of the process of resolution of conflicts and shall include the determination of costs and how these costs are to be allocated between the parties.

CHAPTER XVI

Final provisions

Article 40

Legislative references

The references to Portuguese, Community or international statutory instruments shall be deemed as references to substituting or amending legislation.

Article 41

Transitory provisions

1 – The sub-concession presently granted to the Companhia Portuguesa Radio Marconi, S.A., remains in force.

2 – The provision of the maritime mobile service shall be ensured by the concessionaire on a transitional basis, up to the respective transfer to a different entity, which shall occur within one year at the most from the entry into force of the amendment agreement of the concession contract.

3 – The concessionaire shall be compensated for the negative operating margins relating to the provision of the maritime mobile service, through the mechanisms provided for in article 21.

