



E. STATUTES OF ANACOM

STATUTES OF ICP – AUTORIDADE NACIONAL DE COMUNICAÇÕES (ICP – ANACOM)

Decree-Law no. 309/2001 of 7 December^{1 2}

Established by Decree-Law no. 188/81 of 2 of July, the Instituto das Comunicações de Portugal (ICP) has been endowed with approved statutes since 1989, which over the course of more than a decade of activity have been successively modified to clarify aspects of its activity and attend to the various demands arising from progress in the sector.

Despite such occasional modifications, its functions and institutional framework have been directly or indirectly influenced by economic and legislative transformations in the communications sector, stimulated by the effect of community law with regard to liberalisation and the intervention of competition in the sector, without prejudice to the permanence of universal services subject to the obligations of public service.

Indeed, over the past ten years, the gradual liberalisation of the communications sector, particularly telecommunications, extensively marked by the influence of community law, has resulted in the incorporation into national law of a large number of norms that have led to recognition of various responsibilities for the ICP, among which are its explicit designation as a "regulatory entity" for the telecommunications sector, as set by Law no. 91/97 of 1 August, which defined the general bases to follow with regard to the establishment, management and operation of telecommunications networks and the provision of telecommunications services.

Besides intervening in the telecommunications sector, the ICP is also the postal regulatory entity, under terms of provisions of article 18, paragraph 2, of Law no. 102/99 of 26 July, which defined the general bases to follow with regard to the establishment, management and operation of postal services in national territory.

The indicated responsibilities are augmented by, among others, those of guaranteeing the existence and availability of a universal communications service, assuring effective competition in the telecommunications market, promoting clarification for consumers, ensuring management of numbering in the communications sector including the assignment of resources and their supervision, the granting of licences to exercise postal and telecommunications activity, monitoring compliance with laws and regulations applicable to the sector, arbitration and resolution of conflicts arising in the context of communications, counselling the government upon request or own initiative on the definition of strategic guidelines and general policies for communications, and issuing opinions and preparing draft legislation in the area of communications.

The dispersal of responsibilities among various separate legal measures has made it imperative that such be consolidated in one single text, which should aim to solidify, and even clarify or explain the scope of some of them, in order to contribute towards facilitating comprehensive and integral understanding of the ICP's role and strengthening of its cohesion as an authority for the regulation and supervision of communications. Indeed, such justifies the need to proceed with

¹ This is not an official translation of the law.

² Decree-Law no. 309/2001 of 7 December, published in *Diário da República*, no. 282, I Series – A, of 7 December 2001.

modifications, whether in the respective organic-institutional framework or in the very designation itself, which is changed to ICP – Autoridade Nacional de Comunicações (ICP – ANACOM).

The comprehensive fulfilment of the responsibilities incumbent upon ICP – ANACOM make it a true entity for the regulation and supervision of communications, which demands not only strict identification but also strengthened powers and procedures of authority. Besides issuing binding individual and tangible acts and formulating set recommendations, initiating and accompanying legal cases and punishing infractions in its jurisdiction, supervising compliance with laws and regulations applicable to the communication sector, monitoring the activity of entities subject to its oversight and the functioning of the telecommunications market, ICP – ANACOM should also be allowed to issue those regulations deemed indispensable to the pursuit of its duties.

The technical specificity of the communications sector, along with the constant innovations in same, necessitates the existence of a broad space for ordered intervention by the regulatory authority. This is a normative power based on recognition that only ICP – ANACOM, the result of technical specialisation and accumulated knowledge, is prepared to quickly and flexibly respond to the constant needs and changes produced by the sector, particularly the telecommunications market.

The need to adapt to innovations stemming from constant technical progress and globalisation also implies that the regulatory body for communications should be endowed with instruments that give it flexibility, not only at the tangible legal level, but also with regard to the economic/financial regime governing contracts for the acquisition of goods and services.

The legal regime for the functions of ICP – ANACOM will thus be a mixed regime that joins the prerogatives of public law indispensable for the use of its powers of authority with the flexibility and efficiency of private law, given that it intervenes in a sector undergoing constant change.

Expanding liberalisation in the sector has meant that the regulatory authority for communications is increasingly called on to ensure real and effective competition in the sector, and to act as a neutral and unbiased arbiter. This means that the guaranteed existence of effective competition between operators and service providers, not just concerning access but also market activity, obviates greater functional and organic independence for ICP – ANACOM.

Lastly, without prejudice to eventual evolution of the regulatory framework applicable to the communications and audiovisual sectors with regard to convergence, this statute consecrates in one act a modern and effective regulatory matrix, as well as a new organisational model that is flexible and in line with the programmed goals of the government vis-à-vis State reform.

Thus:

According to the terms of line a) of paragraph 1 of article no. 198º of the Constitution, the Government decrees the following:

Article 1

Statute of the ICP – Autoridade Nacional de Comunicações (ICP – ANACOM)

1. The Instituto das Comunicações de Portugal (ICP), established by Decree-Law no. 188/81 of 2 July, changes designation, becoming ICP – Autoridade Nacional de Comunicações, abbreviated to ICP – ANACOM.

2. ICP – ANACOM is the continuation of the corporate entity of the ICP established by Decree-Law no. 188/81 of 2 July, maintaining all the rights and legal or contractual obligations that are within the respective legal sphere.

3. From the date this measure takes effect, references made to the ICP in law or contracts shall be considered to refer to ICP – ANACOM.

4. This statute will be title enough to verify what is anticipated in the previous paragraph for all legal effects, including those of registry; the appropriate departments should thus do the necessary acts to regularise the situation, without any charges or fees, by means of a simple communication from the chairman of the board of administration.

Article 2

State equivalence

In the exercise of its responsibilities, ICP – ANACOM assumes the rights and obligations assigned to the State, in the applicable regulatory and legal provisions, namely with regard to:

- a) Coercive collection of fees, service income and other credits;
- b) Protection of its installations and personnel;
- c) Public use of communications services, their supervision, definition of the respective infractions and applications of the appropriate penalties;
- d) Radio spectrum supervision and legal notifications, application of sanctions and other acts deriving therefrom.

Article 3

Exemptions

ICP – ANACOM is exempt from all charges, costs and fees of any nature in the notary acts and processes in which it intervenes.

Article 4

Current mandates

1. Approval of these Statutes does not imply an end to the mandates, which remain unaltered, of members of ICP – ANACOM bodies in office on the date this measure takes effect.

2. The new status of members of the board of administration does not apply to incumbent members of the current board of administration unless by means of their own declaration, to be submitted within 30 days after this measure takes effect.

Article 5

Revocatory norm

The following are revoked: Decrees-Law nos. 283/89 of 23 August, except paragraph 3 of article 28; 379/90 of 7 December; 165/92 of 5 August; 95/96 of 17 July; and 100/98 of 21 April.

Article 6

Entrance into effect

This measure will take effect 30 days after its publication.

ANNEX

STATUTES OF ICP – AUTORIDADE NACIONAL DE COMUNICAÇÕES (ICP – ANACOM)

CHAPTER I

General provisions

Article 1

Legal nature and purpose

1. The ICP – Autoridade Nacional de Comunicações, abbreviated to ICP – ANACOM, is a public corporation endowed with financial and administrative autonomy and its own assets.
2. The aim of ICP – ANACOM is to regulate, supervise and represent the communications sector under the terms of these statutes and the law.

Article 2

Headquarters and branch offices

1. The headquarters of ICP – ANACOM are in Lisbon.
2. ICP – ANACOM may have branch offices, agencies or other forms of representation in national territory.

Article 3

Legal regime

ICP – ANACOM is governed by the contents of these statutes, by the respective specifically applicable legal provisions, and, to a subsidiary degree, by the legal regime for public business entities, except for the specific situations anticipated by these statutes and the rules incompatible with the non-business nature of same.

Article 4

Independence

ICP – ANACOM is independent in the exercise of its functions, in the context of law, without prejudice to the guiding principles of communications policy set by the Government, according to constitutional and legal terms and the acts subject to ministerial tutelage under terms anticipated by law and in these statutes.

Article 5

Principle of specialty

1. The legal capacity of ICP – ANACOM encompasses the rights and obligations necessary for it to accomplish its purpose.
2. ICP – ANACOM may not undertake activities or use powers outside its responsibilities, nor may it use its resources for ends other than those it has been assigned.

CHAPTER II

Responsibilities and powers

Article 6

Responsibilities

1. The responsibilities of ICP – ANACOM are:
 - a) To assist the Government, upon its request or on own initiative, in the definition of strategic guidelines and general policies for communications and the activity of communications operators, including the issuance of and the drafting of legislation in the field of communications;
 - b) To assure regulation and oversight of the communications sector;
 - c) To assure management of the radio spectrum, including planning, the assignment of spectrum resources and their supervision, and also to oversee co-ordination between civil, military and paramilitary communications;
 - d) To assure compliance with the obligations inherent to universal communications service;
 - e) To guarantee that communications operators have access to networks, in conditions of transparency and equality, according to the terms anticipated by law;
 - f) To foster competition and development in communications markets, namely in the context of the convergence of communications, the media and information technologies;
 - g) To co-ordinate with the appropriate entity application of the law on competition in the communications sector;
 - h) To protect the interests of consumers, particularly users of universal service, via co-ordination with the appropriate entities, namely by encouraging consumer clarification and ensuring the dissemination of information inherent to the public use of communications;
 - i) To grant rights for the exercise of postal and telecommunications activities;

- j) To evaluate the conformity of equipment and material and to set the requirements needed for its commercialisation;
- l) To promote technical standardisation, in collaboration with other organisations, in the communications sector and related areas;
- m) To promote processes of public consultation and manifestation of interest, namely with regard to the introduction of new services or technologies;
- n) To ensure the application and supervision of compliance with laws, regulations and technical requirements applicable in the scope of its responsibilities; as well as communications operators' compliance with provisions of the respective licences for the exercise of activity or concession contracts;
- o) To participate in defining the comprehensive strategy for communications development, namely in the context of telecommunications convergence, the media and information technologies, undertaking the appropriate studies to that end;
- p) To collaborate in the definition of civil emergency planning policies for the communications sector;
- q) To arbitrate and resolve disputes arising in the context of communications, according to the terms set by law;
- r) To assure technical representation of the Portuguese State in international counterpart bodies, when no alternative has been determined;
- s) To assure the realisation of studies in the areas of postal communications and telecommunications, as well as the execution of projects to promote the development of access to the information and knowledge society, namely when involving the introduction of advanced services and networks, the reduction of regional asymmetries, the adoption of measures applicable to citizens with special needs, whether direct or in the form of support for public or private entities;
- t) To carry out other functions that are assigned it by law.

2. It is also incumbent upon ICP – ANACOM:

- a) To work with other public and private entities to promote scientific investigation applied to communications, as well as national and international publicity of the sector;
- b) To accompany the activity of similar regulatory bodies and foreign experience in regulating communications, and to establish relations with other regulatory bodies, and, on the technical level, with community and international bodies;
- c) To effect dissemination of the valid regulatory framework and its powers and initiatives, as well as the rights and obligations of operators and consumers of communications;
- d) To technically support the bodies and services whose duty is to accompany the process of establishing and managing the integrated network of emergency communications.

Article 7

Advisory powers

1. ICP – ANACOM will pronounce itself on all matters within its area of responsibilities that are submitted to it by the Assembly of the Republic or the Government and may, on its own initiative, suggest or propose political or legislative measures in matters pertinent to its responsibilities.
2. ICP – ANACOM will respond within a maximum of 60 days to consultations addressed to it by licensed entities or concessionaires on matters within its jurisdiction.

Article 8

Collaboration with other authorities

- ICP – ANACOM also enjoys the co-operation of the appropriate authorities and services in all that is necessary for it to fulfil its duties.

Article 9

Regulatory and supervisory procedures

In the scope of its powers of regulation and supervision, ICP – ANACOM may adopt, under terms of the law, the following procedures:

- a) The elaboration of regulations in cases anticipated by law and when shown to be indispensable for the exercise of its responsibilities;
- b) Accompany activities of the entities subject to its oversight and the functioning of communications markets;
- c) Monitor compliance with the law and applicable regulations in the communications sector;
- d) Approval of acts anticipated by law;
- e) Effect registration as anticipated by law;
- f) The initiation and accompaniment of cases involving sanctions, and the punishment of infractions within its jurisdiction;
- g) Give orders and formulate tangible recommendations;
- h) Disseminate information;
- i) Publish studies;
- j) Others anticipated by law.

Article 10

Procedures for sanctions

1. ICP – ANACOM is responsible for initiation legal cases and punishing administrative infractions of the laws and regulations whose implementation or supervision is within its jurisdiction, as well as those resulting from non-fulfilment of its own determinations.

2. The sanction procedures respect the principle of hearing for the interested parties, the contesting party and the other divers principles contained in the Code of Administrative Procedure, and, when appropriate, the regime for offences.

3. It is also incumbent upon ICP – ANACOM to report to the proper authorities when it learns of infractions during the performance of its duties.

Article 11

Regulatory procedure

1. The regulations of ICP – ANACOM should obey the principles of legality, necessity, clarity, participation and public availability.

2. Before approval or modification of any regulation whose issuance is under its competence, ICP – ANACOM must inform the respective minister of tutelage, the concessionary or licensed entities, operators, the various registered service providers and consumers associations of generic or specific interest in the area of communications, providing them access to the respective texts and ensuring that same are available on its website.

3. For effects of the previous paragraph, the interested parties may issue their comments and submit suggestions during a period of 30 days.

4. The entities anticipated in the preceding paragraph 2 may have access to all the suggestions that have been presented under terms of this article.

5. The preliminary report of a regulation serves as the basis for the decisions, with necessary reference to criticism or suggestions made with regard to the draft.

6. The ICP – ANACOM regulations containing external efficacy standards are published in the II series of the *Diário da República* and disseminated on the respective website, without prejudice to their eventual release via other means deemed more appropriate for the situation.

7. The ICP – ANACOM regulations that only concern regular procedures of an internal nature for one or more categories of operators or service providers are called orders - the respective addressees are informed when identified - and take effect five days after notification or on the date referred to therein.

Article 12

Exercise of oversight

1. Under terms of the law, ICP – ANACOM may proceed with inquiries and tests at any site or entity within the scope of those functions.

2. For effects of the aforementioned paragraphs, ICP – ANACOM may accredit especially skilled or qualified persons or entities.

Article 13

Obligations of operators

1. The concessionary or licensed entities, operators and other registered service providers must provide ICP – ANACOM with all co-operation solicited by same for the comprehensive fulfilment of its duties, namely concerning requested documents and information, which should be furnished within a maximum time period of 30 days, unless another lesser deadline be established for reasons of urgency.

2. ICP – ANACOM may proceed to disseminate the information obtained, as long as such is relevant for regulation of the sector, unless the material is sensitive for the entities in question.

3. ICP – ANACOM may release the identity of the operators subject to investigative processes, as well as the respective matter under investigation, especially when the process results from a complaint.

Article 14

Confidentiality

1. The holders of office in ICP – ANACOM bodies, their respective duly accredited and qualified representatives, individuals or entities, as well as its employees, whether occasional or permanent, are explicitly obliged to maintain secret all facts that come to their knowledge exclusively through the performance of their duties.

2. The violation of the obligation of professional secrecy anticipated in the previous paragraph is, beyond the inherent disciplinary and civil responsibility, punishable under terms of the Penal Code.

Article 15

Co-operation with other entities

ICP – ANACOM may establish relations of co-operation or association, in the scope of its responsibilities, with other public or private entities, national or foreign, namely within the framework of the European Union, so long as such does not imply delegation or sharing of its regulatory powers.

Article 16

Complaints by consumers and users

1. ICP – ANACOM may regularly inspect the registries of complaints and claims by consumers and other users, submitted to the concessionary or licensed entities, which should maintain due record of the same.

2. ICP – ANACOM may order the investigation of complaints or claims from consumers and users, submitted to the appropriate concessionary or licensed entities or directly to the regulatory authority itself, as long as within the scope of its jurisdiction.

3. ICP – ANACOM may likewise recommend or determine to the concessionary or licensed entities the necessary steps to take to resolve just complaints by users.

Article 17

Fulfilment of legal or contractual obligations

1. In case of non-fulfilment of the obligations inherent to provision of universal service, the legal and contractual obligations in general, or the regularly defined quality standards, ICP – ANACOM may determine or recommend to the concessionary or licensed entities the adoption of the appropriate corrective measures.

2. If the determined actions are not carried out, or if the established schedule for their execution is not fulfilled, then ICP – ANACOM may, depending on the case, take action or propose that the Government take the punitive measures anticipated for violation of the law or non-compliance with concession contract or license conditions.

Article 18

Arbitration

1. ICP – ANACOM should encourage voluntary arbitration for the resolution of conflicts of a commercial or contractual nature between the concessionary and licensed entities for production, transport and distribution, and between them and consumers.

2. To fulfil provisions of the previous paragraph, ICP – ANACOM may co-operate in the creation of institutionalised arbitration centres and establish agreements with existing institutionalised arbitration centres.

CHAPTER III

Organisation of ICP – ANACOM

Article 19

Bodies

ICP – ANACOM has the following bodies: a board of administration, a statutory audit council and an advisory council.

SECTION II

Board of administration

Article 20

Function

The board of administration is the body responsible for the definition and implementation of the regulatory activity of ICP – ANACOM, as well as for the direction of its respective services.

Article 21

Composition and appointment

1. The board of administration comprises a president and two or four board members; in the latter case a vice president should be designated.
2. The members of the board of administration are appointed by resolution of the Council of Ministers, upon proposal by the member of Government responsible for communications.
3. The members of the board of administration are nominated from among people of recognised capacity, independence and technical and professional competence.
4. Ineligible for nomination are those who have been members of the managing bodies of companies in the communications sector for the past two years, i.e., who have worked with or been permanent collaborators of same with directorial or leadership duties during that same period of time.
5. The members of the board of administration may not retain interests of a financial nature or shares in regulated companies in the sectors of communications.
6. The members of the board of administration are appointed for a non-renewable period of five years; the members remain in office until their effective replacement or declaration of cessation of functions.

Article 22

Status

1. The members of the board of administration enjoy the status of public manager in all that does not derive from these statutes, with their remuneration established by joint order from the Ministries of Finance and of tutelage, and the member of Government responsible for State Reform and Public Administration, in accordance with that statute.
2. The general regime for social security is applicable to members of the board of administration, except when they are on the public service rolls, in which case the specific regime of their post of origin will be applied.
3. The members of the board of administration may not, during their mandate, exercise any other public function or professional activity, except with regard to part-time teaching activities in higher education.
4. The members of the board of administration are subject to the incompatibilities and impediments regarding holders of high public office.

Article 23

Cessation of functions

1. The members of the board of administration cease exercise of their functions:
 - a) When the time period for which they were designated is finished;
 - b) Due to permanent incapacity or subsequent incompatibility of the office holder;

- c) By resignation;
 - d) By dismissal decided by resolution of the Council of Ministers in case of serious fault, proved to have been committed by the office holder in the pursuit of his duties or in the fulfilment of an obligation inherent to the position;
 - e) Due to condemnation for the practice of any felony.
2. The mandate of members of the board of administration will end if said body is dissolved or ICP – ANACOM is legally disbanded or merged with another regulatory body.
 3. In case of individual cessation of mandate, the new member is always appointed for a period of five years.
 4. After the end of their period of duty, members of the board of administration are barred from carrying out any function or providing any service to companies in the regulated sectors for a period of two years.
 5. During the impediment period established in the previous paragraph, the regulatory entity will continue to provide ex-members of the board of administration with 2/3 of the remuneration corresponding to the respective position; this allowance will cease from the moment in which same are contracted or appointed to carry out any remunerated public or private service or function, except for the functions anticipated in paragraph 3 of article 22.

Article 24

Dissolution of the board of administration

1. The board of administration can only be dissolved by resolution of the Council of Ministers and following an opinion issued by the ICP – ANACOM advisory council, in the following cases:
 - a) Serious irregularities in the functioning of the body;
 - b) Considerable excesses in expenses over those stipulated in the budget, without due justification.
2. In case of dissolution of the board of administration, the new members are appointed for the following mandates:
 - a) in the case of a three-member council, one member for five years, one for four years and one for three years;
 - b) in the case of a five-member council, two members for five years, two for four years and one for one year.

Article 25

Independence of members

Without prejudice to the provisions of article 4 and the preceding articles, the members of the board of administration are independent in the exercise of their functions, and are not subject to instructions or specific orientations.

Article 26

Powers of the board of administration

The board of administration is endowed with the following powers:

- a) To define the general orientation of ICP – ANACOM and monitor its execution;
- b) To approve regulations and effect the deliberations anticipated in this measure or necessary for the performance of its functions;
- c) To draft the findings anticipated in the current statutes;
- d) To annually elaborate a report on the situation of communications and on its regulatory and oversight activity, and to disseminate same to the public by the most appropriate means, submitting it to the Ministry of tutelage by the date set for elaboration of the annual report and accounts;
- e) To approve the organisation and functioning of ICP – ANACOM;
- f) To constitute attorneys and designate representatives of ICP – ANACOM to other entities;
- g) To collect revenues and authorise expenditures;
- h) To manage the property of ICP – ANACOM; it may acquire, alienate or encumber moveable or immovable property, and accept donations, inheritances or legacies;
- i) To submit for tutelary approval the multi-annual activity and financial plans, the budgets and the annual report and accounts of ICP – ANACOM;
- j) To submit for approval by the Ministry of tutelage the opening or closing of branch offices or agencies of ICP – ANACOM;
- l) To practice all the divers acts necessary to fulfil the responsibilities of ICP – ANACOM where no other body has jurisdiction.

Article 27

Delegation of powers

1. The board of administration may delegate, by act, powers to one or more of its members or to ICP – ANACOM workers, and authorise the sub-delegation of those powers, fixing in each case the respective limits and conditions.
2. Without prejudicing the inclusion of other powers, the assignment of a position implies delegation of the necessary powers to direct and supervise the respective services, and to practice the acts of management current to the respective organisational units.
3. Deliberations that involve the delegation of powers must be subject to publication in the II Series of the *Diário da República*.

Article 28

Functioning

1. The board of administration ordinarily meets once a week and extraordinarily when convoked by its chairman upon own initiative or when requested by two of the other members.

2. The board of administration may designate an employee to provide its assistance, with the duty, among other tasks, to promote the respective summons and prepare the minutes of meetings.

Article 29

Chairman of the board of administration

1. The responsibilities of the chairman of the board of administration are:

- a) To convoke and preside over the board of administration and lead its meetings;
- b) To co-ordinate the activity of the board of administration;
- c) To represent ICP – ANACOM in court or outside it, except when the law or other statutes require other form of representation;
- d) To assure relations between ICP – ANACOM and the Government and other authorities.

2. When there is no vice president, the chairman of the board of administration designates the voting member who will replace him when absent or otherwise prevented from attending; in cases where no such designation has been made, he is replaced by the most senior voting member, or, in case of equal seniority, by the oldest voting member.

3. In cases of duly grounded urgency, the chairman of the board of administration or his replacement when absent or otherwise prevented from attending may practice any acts within the powers of the board of administration, which are nevertheless subject to ratification at the next ordinary meeting of the board.

4. The chairman of the board of administration may delegate the exercise of part of his powers to any of the other board members.

Article 30

Legal binding of ICP – ANACOM

1. ICP – ANACOM is bound by signature:

- a) Of the chairman of the board of administration and two other members, if no alternate manner has been deliberated by the same board;
- b) Of whomsoever is charged to that end, under the terms and scope of the respective mandate.

2. Acts of mere expedient may be signed by any member of the board of administration or by ICP – ANACOM employees to whom such power has been explicitly granted.

3. Without prejudice to the previous paragraphs, ICP – ANACOM is also obliged by the signature of its attorneys, within the restricted bounds of the powers granted thereto.

SECTION II

Statutory audit council

Article 31

Function

The statutory audit council is responsible for controlling legality and economic practice in management of the assets and finances of ICP – ANACOM, and for advising the board of administration in that area.

Article 32

Composition and status

1. The statutory audit council consists of a chairman and two board members; one of the board members is the chartered accountant, designated by joint order of the Ministry of Finance and the Ministry of tutelage, for a renewable three-year period.

2. The remuneration of members of the statutory audit council is established in the terms of paragraph 1 of article 22.

Article 33

Powers

It is incumbent upon the statutory audit council to:

- a) Accompany and control management of the assets and finances of ICP – ANACOM;
- b) Periodically assess the financial and economic situation of ICP – ANACOM and verify compliance with the regulatory standards for its activity;
- c) Issue opinions on the acquisition, encumbrance, lease or alienation of immoveable property;
- d) Issue opinions on the budget and annual report and accounts of ICP – ANACOM;
- e) Issue opinions on any matter submitted to it by ICP – ANACOM bodies;
- f) Inform the appropriate entities of any detected irregularities.

Article 34

Functioning

The statutory audit council ordinarily meets once per month and extraordinarily when summoned by its chairman, or by initiative or solicitation from any of the other members, or upon request by the chairman of the board of administration.

SECTION III

Advisory council

Article 35

Function

The advisory council is a body for consultation, support and participation in definition of the general guidelines for the activity of ICP – ANACOM.

Article 36

Composition

1. The advisory council comprises the following:

- a) A representative of the Ministry of tutelage, who presides;
- b) One representative of each one of the members of Government responsible for the areas of national defence, internal administration, economy, culture, science and technology, media, and consumer defence;
- c) One representative from each of the Autonomous Regions of the Azores and Madeira;
- d) One representative of the National Association of Municipalities;
- e) One representative of the Competition Council;
- f) One representative of the concessionary entity for the universal postal service;
- g) One representative of the concessionary entity for the basic telecommunications network;
- h) One representative of the public telecommunications network operators;
- i) One representative of the terrestrial digital radio broadcasting platform operators;
- j) Two representatives of the mobile telecommunications service providers and operators;
- l) One representative of Internet access providers;
- m) One representative of fixed telephone service providers;
- n) One representative of cable distribution network providers;
- o) One representative of postal service providers operating under a regime of competition;
- p) One representative to designate by merchants and installers of telecommunications systems;
- q) One representative to designate by manufacturers of equipment, infrastructures or logic supports;
- r) Two representatives of companies that use communications, designated by the respective nationwide associations;
- s) Two representatives of individual consumers of communications services, to be designated by the consumers associations of generic or specific interest in the area of communications, under terms of Law no. 24/96, of 31 July.

2. The appointment of members of the advisory council is the responsibility of the entities represented; in the case of the representatives mentioned in lines i) and t), the appointments will

be made during a meeting of the interested parties convoked by the chairman of the advisory council.

3. The representatives mentioned in paragraph 1, as well as their replacements, not more than one per representative, should be communicated to the chairman of the council in the 30 days previous to the end of mandate of outgoing members or in the 30 days after the post becomes vacant.

4. The appointment of members of the advisory council is made for a renewable period of three years, without prejudice to their eventual replacement at any time by the appointing entities.

5. The members of the board of administration and statutory audit council, as well as other entities invited by the chairman of the advisory council during the discussion and analysis of specific matters, may attend meetings of the advisory council and take part in its proceedings, but without the right to vote.

6. Members of the advisory council have the right to payment for travel expenses and cost allowances for their trips when they reside outside the meeting area; such are supported by the ICP – ANACOM budget.

Article 37

Powers

It is incumbent upon the advisory council to provide opinions on:

- a) The general orientations of the ICP – ANACOM plan of activities and budget;
- b) The annual activities report, as well as the report anticipated in article 52;
- c) The prices and rates for universal service;
- d) The comprehensive development strategy of communications and its relationship with national participation in the global information society;
- e) Any other matter that the ICP – ANACOM board of administration, upon own initiative or that of the Government, should submit for its appreciation.

Article 38

Functioning

1. The advisory council ordinarily meets, convoked by its chairman, twice each year, particularly for effects of the provisions in lines a) and b) of the previous article, and extraordinarily by initiative of the chairman or upon request by at least one third of its members.

2. The advisory council is held to have been constituted for all effects when a majority of its members has been designated.

SECTION IV

Common provisions

Article 39

Procedure

1. Deliberations of the bodies of ICP – ANACOM are applicable to the regime anticipated in the Code of Administrative Procedure, bar the exceptions foreseen in the following paragraphs.
2. Abstentions are not permitted during votes.
3. The minutes of the meetings must be signed by all members present at same, except in the case of the advisory council, for which they will only be signed by the respective chairman and secretary.
4. Each body approves its respective internal operational regulations.

Article 40

Convocations

1. The bodies of ICP – ANACOM meet upon summons from the respective chairmen, addressed to each of the members, without prejudicing the provisions of the following paragraph.
2. Meetings held to be validly convoked are those called periodically at a pre-established time, date and place, as well as meetings whose realisation was decided at a previous meeting, in the presence or with the knowledge of all members of the convoked body, and with indication of time, date and place.

CHAPTER III

Management of finances and assets

Article 41

General rules

1. The activity of ICP – ANACOM regarding finances and assets is governed by the provisions of these statutes and also by the legal regime applicable to public business enterprises, except with respect to the provisions of this measure.
2. The management of the finances and assets of ICP – ANACOM is governed according to the principles of private law; the general regime for financial activity of autonomous services and funds is not applicable thereto, without prejudicing compliance with the rules of international and community law on public markets.
3. ICP – ANACOM should in all cases adopt contractual procedures governed by the requirements of advertisement, competition and non-discrimination, as well as quality and economy.

4. The budget of ICP – ANACOM, which will be stipulated in the General State Budget, is drawn up in accordance with the General Accounting Plan; the public accounting regime is not applicable.

5. The accounting of ICP – ANACOM is drawn up in accordance with the Official Accounting Plan; the public accounting regime is not applicable. Consolidated charts must nevertheless be presented, in accordance with the Official Plan for Public Accounting, for approval by the Minister of Finance.

Article 42

Assets

The assets of ICP – ANACOM consist of the whole of the property, rights and guarantees it acquires or contracts in the pursuit of its duties, as well as those assigned it by law.

Article 43

Revenues

The revenues of ICP – ANACOM consist of:

- a) The fees and other revenues collected in the scope of management of the radio spectrum and the national numbering plan.
- b) The fees and other revenues collected in the scope of the assignment of licences authorising activity and the supervision of operators and providers of communications services;
- c) The product of the application of contractual fines, as well as other charges applied under terms of the law;
- d) Revenues from the provision of services, namely from its laboratories;
- e) Any other revenues, income or values that derive from its activity or that by law or contract have been assigned to it or become its property, as well as any donations, subsidies or other forms of financial support;
- f) The product of the alienation of own property and the constitution of rights over same;
- g) Interest deriving from financial applications.

Article 44

Expenditures

The expenditures of ICP – ANACOM consist of those undertaken in the context of exercising its incumbent responsibilities and powers, which concern the duties inherent to its activities and the acquisition of immovable goods.

CHAPTER IV

Services and personnel

Article 45

Services

ICP – ANACOM is endowed with technical and administrative support services, approved by the board of administration and dependent on approval of the activities plan and budget.

Article 46

Personnel regime

1. ICP – ANACOM personnel are subject to the legal regime for individual work contracts and are covered by the general regime for social security.
2. ICP – ANACOM may be a party to collective labour regulation instruments.
3. The hiring of personnel will be preceded by public announcement and carried out according to objective selection criteria, to establish by regulation of ICP – ANACOM.
4. Conditions with respect to discipline and the provision of work are defined in a regulation specific to ICP – ANACOM, with observance of the necessary legal provisions of the regime for individual work contracts.

Article 47

Incompatibilities

The personnel of ICP – ANACOM may not provide work or other services, remunerated or not, to companies subject to their oversight or others whose activity clashes with the responsibilities and powers of ICP – ANACOM.

Article 48

Supervisory functions

1. ICP – ANACOM workers, respective attorneys and the qualified and duly accredited people or entities that perform oversight functions, when exercising their functions are considered to be agents of authority and thus enjoy the following prerogatives:
 - a) Access to installations, equipment and services of entities subject to inspection and control by ICP – ANACOM;
 - b) Authority to requisition documents for analysis, as well as equipment and material to conduct tests;
 - c) To identify, for subsequent action, all individuals who infringe on legislation and regulations whose observance they are obliged to respect;
 - d) To demand the collaboration of the proper authorities when deemed necessary for the performance of their duties.

2. ICP – ANACOM employees, respective attorneys and qualified and duly accredited people or entities who perform the functions described in the previous paragraph are provided with identification cards whose model and issuance conditions are listed in the respective order from the member of Government responsible for communications.

Article 49

Mobility

1. Functionaries of direct or indirect administration of the State, the autonomous regions and local authorities, as well as employees, cadres or administrators of public or private enterprises, may be requisitioned to fill positions at ICP – ANACOM on a regime of service commission, with guarantee of their post of origin and the respective accrued rights, with the period of commission to be considered as service time performed in the department of origin and with all inherent costs supported by ICP – ANACOM.

2. ICP – ANACOM employees may carry out duties in other entities, without prejudice to the provisions of article 48, in regime of detachment, requisition or otherwise, according to the terms of the law and with guarantee of their post of origin and respective accrued rights, with such period considered to be effective service provided at ICP – ANACOM.

CHAPTER VI

Judicial control, responsibility and tutelage

Article 50

Tutelage

1. Without prejudice to its organic and functional independence, ICP – ANACOM is subject, under terms of these statutes, to tutelage by the member of Government responsible for communications and, when the case arises, by the Minister of Finance, under terms of this Statute and all other applicable legislation.

2. Ministerial approval is required for:

- a) The activities plan and budget;
- b) The activities report and accounts;
- c) Other acts anticipated by law.

3. Approval is considered to be tacitly granted after 60 days.

Article 51

Report to the Government and the Assembly of the Republic and parliamentary hearings

1. ICP – ANACOM will send to the Government an annual report on its regulatory activities, also to be submitted to the Assembly of the Republic.

2. The chairman of the board of administration will respond, whenever so requested, to requests for hearing addressed by the appropriate committee of the Assembly of the Republic, to provide information or clarification on its activities.

Article 52

Legal responsibility

Office holders of the bodies of ICP – ANACOM and its workers and attorneys are civilly, criminally, disciplinarily and financially responsible for acts and omissions committed during the exercise of their functions, under terms of the Constitution and divers applicable legislation.

Article 53

Judicial control

1. The activity of an administrative nature of the organs and attorneys of ICP – ANACOM is subject to administrative jurisdiction, under terms of the respective legislation.
2. The sanctions for countermanding infractions are generally impugnable in judicial courts.
3. The decisions pronounced in the scope of resolving litigation may be appealed to judicial or arbitration courts, under the terms anticipated by law.

Article 54

Oversight of the Audit Court

1. ICP – ANACOM is subject to the jurisdiction of the Audit Court, under terms of the pertinent legislation.
2. The acts and contracts of ICP – ANACOM are not subject to appreciation by the Audit Court; however, the presentation of the annual accounts for purposes of judgment is compulsory.

Article 55

Electronic page

1. It is incumbent upon ICP – ANACOM to provide an internet site containing all relevant information, namely the measure of establishment, the statutes and regulations, as well as the composition of its bodies and including the plans, budgets, reports and accounts pertinent to the previous two years of its activity and also the regulations, deliberations and generic instructions issued.
2. The electronic page serves as support for the dissemination of models and forms for the presentation of requests by electronic means, aiming to satisfy it and provide information on line, according to terms admitted by law.