

ERC/2016/260 (OUT-TV) Decision

Multi-year plan establishing the obligations for television programme services and on-demand audiovisual media services to ensure accessibility for persons with special needs

Lisbon, 30 November 2016

Regulatory Board of the Portuguese Regulatory Authority for the Media (ERC)

ERC/2016/260 (OUT-TV) Decision

Subject: Multi-year plan establishing the obligations for television programme services and on-demand audiovisual media services to ensure accessibility for persons with special needs

Considering the provisions of no. 3 of article 34 of Law no 27/2007, of 30 July (Television and On-demand Audiovisual Media Services Law)¹ that determine that the Portuguese Regulatory Authority for the Media (hereinafter, ERC) – after consulting the National Institute for Rehabilitation, other entities representing people with disabilities, the television operators and the operators of on-demand audiovisual media services - is responsible for determining the set of obligations for television programme services and on-demand audiovisual media services to ensure accessibility for persons with special needs. Such obligations may involve subtitling, sign language, audio-description or other techniques deemed appropriate and the availability of easily understandable navigation menus, to be specified in a multi-year plan that allows for gradual implementation that takes into account the technical and market conditions observed by ERC at any given time;

Considering the principles enshrined in Law no. 38/2004, of 18 August, which establishes the General Basis of the Legal Framework for the Prevention, Empowerment, Rehabilitation and Participation of Persons with Disabilities, in particular article 43;

Considering the European Parliament and Council Directive 2010/13/EU, of 10 March 2010², which addresses the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) which proposes, in article 7, that “Member States shall encourage media service providers under their

¹ Corrected by Statement of Correction no. 82/20017 and amended by Laws nos. 8/2011, of 11 April, and 40/2014, of 9 July.

² Corrected by Correction to Directive 2010/13/UE, published in the Official Journal of the European Union, on 6 October 2010.

jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability”;

Considering the UN Convention on the Rights of Persons with Disabilities, signed and ratified by Portugal, particularly as regards article 21 of this convention;

Considering the special responsibilities of the concession holder for public service television stipulated in the Concession Contract, which are underpinned by the provisions of subparagraph j) of article 51 of the Television and On-demand Audiovisual Media Services Law;

Considering recent technological advances, in particular with respect to digital platforms, which facilitate the use of the functionalities planned in the Television and On-demand Audiovisual Media Services Law;

Considering that market conditions, despite still being adverse for the various stakeholders, particularly those working in advertising, do not appear to indicate that business profitability is at risk in most companies and that, on the contrary, many businesses have shown that they have been able to adapt their cost structures, as detailed in ERC’s latest Regulatory Report, published in 2016.

Having consulted the National Institute for Rehabilitation, associations representing people with disabilities, television operators and operators of on-demand audiovisual media services, as required by law;

Having complied with the provisions of article 121 and subsequent provisions of the Administrative Procedures Code regarding the stakeholder consultation process,

ERC’s Regulatory Board has decided to approve the multi-year plan covering the period between 1 February 2017 and 31 December 2020, which has been divided into distinct specified time periods. The obligations set out in the following points are incumbent upon those television operators and operators of on-demand audiovisual media services subject to Portuguese jurisdiction.

I. Public Service Television

Period: 1 February 2017 to 31 December 2018

Generalist programme services provided on a national basis with free non-conditional access

1. The first generalist television programme service provided on a national basis with free non-conditional access that comprises part of the public service television offer should deliver the following between the hours of 8 am and 2 am:

1.1. Twenty hours per week of informational, fictional, documentary or cultural magazine programming with subtitles specifically designed for persons with hearing disabilities. Any appropriate and employable technical means may be used for the purposes.

1.2. Twelve hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language. This is to include the full interpretation of at least one nightly news bulletin per week.

1.3. Seventy hours per year of fiction or documentary programming with audio description.

1.3.1. Exceptionally, and for the period between 1 February and 31 December 2017 only, the requirement for seventy hours per year is reduced to sixty-four hours per year.

2. The second generalist television programme service provided on a national basis with free non-conditional access that comprises part of the public service television offer should deliver the following between the hours of 8 am and 2 am:

2.1. Twenty hours per week of informational, fictional, documentary or cultural magazine programming with subtitles specifically designed for persons with hearing disabilities. Any appropriate technical means may be used for the purposes.

2.2. Twelve hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language. Where the programming schedule includes evening news bulletins, one such bulletin is to be fully interpreted each night.

2.3. Twenty hours per year of fiction or documentary programming with audio description.

2.3.1. Exceptionally, and for the period between 1 February and 31 December 2017 only, the requirement for twenty hours per year is reduced to eighteen hours per year.

3. Generalist programme services provided on a national basis with free non-conditional access that comprise part of the public service television offer should broadcast programmes specifically aimed at people with special needs, in accordance with sub-paragraph l) of no. 2 of Clause 6 of the Public Service Radio and Television Concession Contract. Such programmes should not be broadcast at off-peak times.

Programme services that are predominantly informational in nature

4. Programme services that are predominantly informational in nature and comprise part of the public service television offer should ensure that, between the hours of 8 am and midnight they deliver four hours per week of informational programming with interpretation in the form of Portuguese sign language. This is to include full interpretation of at least one news bulletin per week.

Programme services of a regional nature for the Autonomous Regions

5. Regional programme services for the Autonomous Regions that comprise part of the public service television offer should ensure that, between the hours of 8 am and midnight, they deliver four hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language.

Period: 1 January 2019 to 31 December 2020

Generalist programme services provided on a national basis with free non-conditional access

6. In the period in question, the generalist programme services provided on a national basis with free non-conditional access that comprise part of the public service offer must, at the very least, comply with the figures set for the period between 1 February 2017 and 31 December 2018

Programme services that are predominantly informational in nature

7. Programme services that are predominantly informational in nature and comprise part of the public service television offer should ensure that, between the hours of 8 am and midnight they deliver six hours per week of informational programmes with interpretation in the form of Portuguese sign language. This is to include the full interpretation of at least two news bulletins per week.

Programme services of a regional nature for the Autonomous Regions

8. Regional programme services for the Autonomous Regions that comprise part of the public service television offer should ensure that, between the hours of 8 am and midnight, they deliver six hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language.

II. Private Television Operators

Period: 1 February 2017 to 31 December 2018

Generalist television programme services provided on a national basis with free non-conditional access

9. The generalist television programme services provided on a national basis with free non-conditional access should deliver the following between the hours of 8 am and 2 am:

9.1. Sixteen hours per week of informational, fictional, documentary or cultural magazine programming with subtitles specifically designed for persons with hearing disabilities. Any appropriate and employable technical means may be used for the purposes.

9.2. Six hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language. This is to include full interpretation of at least one nightly news bulletin per week.

9.3. Twelve hours per year of fiction or documentary programming with audio description.

9.3.1. Exceptionally, and for the period between the dates of 1 February and 31 December 2017 only, the requirement for twelve hours per year is reduced to eleven hours per year.

Generalist and thematic television programme services provided on a national basis with non-conditional access, subject to payment of a subscription

10. Generalist and thematic television programme services provided on a national basis with non-conditional access, subject to payment of a subscription, should ensure that, between the hours of 8 am and midnight they deliver three hours per week of informational programming with interpretation in the form of Portuguese sign language. This is to include the full interpretation of at least one news bulletin per week.

10.1 For the purposes of the foregoing, of the thematic television programme services provided on a national basis with non-conditional access, subject to payment of a subscription only those whose information content focuses predominantly on national and international issues of general interest will be considered.

Period: 1 January 2019 to 31 December 2020

11. In the period in question, the generalist programme services provided on a national basis with free non-conditional access should deliver the following between the hours of 8 am and 2 am:

11.1. Eighteen hours per week of informational, fictional, documentary or cultural magazine programming with subtitles specifically designed for persons with hearing disabilities. Any appropriate and employable technical means may be used for the purposes.

11.2. Eight hours per week of informational, educational, cultural, recreational or religious programming with interpretation in the form of Portuguese sign language. This is to include the full interpretation of at least one nightly news bulletin per week.

11.3. Twelve hours per year of fiction or documentary programming with audio description.

12. In the period in question, the programme services referred to in point 10 must comply with the level of obligations stipulated in this standard for the period between 1 February 2017 and 31 December 2018.

III. Supplementary rules

13. Throughout the abovementioned periods of time, where these are directly applicable to the television programme services subject to the obligations stipulated in this multi-year plan, the said services must adhere to the following rules:

13.1. Irrespective of the above stipulated obligations, the generalist television programme services provided on a national basis with free non-conditional access that broadcast messages or communiqués from the President of the Republic, the President of the Assembly of the Republic or the Prime Minister, under article 30 of the Law on Television, or communiqués from the civil protection services, should ensure that such broadcasts are made accessible to people with hearing disabilities, through interpretation in the form of Portuguese sign language. The contents of the same should also be made available to the blind and the partially sighted online.

13.2. Pre-campaign and in-campaign election debates between political candidates must also be broadcast with interpretation in the form of Portuguese sign language.

13.3. For the purposes of the assessment and provisions in Chapters I and II, the first two broadcasts of each programme item broadcast via the same television programming service will be counted, provided such broadcasts occur during the period covered by this multi-year plan.

13.4. Some programmes are broadcast in series, soap opera or serial form, or any other format based on successive broadcasts over a period of time. The provision of subtitles for those with hearing disabilities or interpretation by means of Portuguese sign language or audio description must ensure the integrity of the work as a whole, so that the entirety of the work may be enjoyed by that part of the audience that makes use of such features.

13.5. It may be that not all news service bulletins are interpreted by means of Portuguese sign language, in the terms established in Chapters I and II. In such cases, the days on which bulletins will be interpreted through Portuguese sign language must be set and published in advance.

13.6. If part of the programmes that are made more accessible by means of subtitling, interpretation by sign language or audio description are broadcast outside the time bands detailed in Chapters I and II, this part will not be considered for the purposes of quantifying the times established by the said provisions.

13.7. In duly justified and warranted one-off cases, the checking of the set of weekly obligations established in Chapters I and II may take into account an average over a 3-week period comprising the week in which the non-compliance occurred, the week before this and the week after.

13.7.1. For the purposes of the provisions in the preceding standard, the operator should inform ERC of the non-compliance during the week immediately after the week in which it occurred, giving its reasons for the occurrence.

13.8. The principle of programming independence will be observed when assessing compliance with the obligations in Chapters I and II and this plan may not impose restrictions on the choice of programmes to be broadcast.

13.9. Television operators are bound by the obligations set out in this multi-year plan, which applies to all their programming services, irrespective of the type of electronic communication network used.

13.10. Those programmes made more accessible by means of subtitles, sign language interpretation or audio description should be clearly identified and labelled in the electronic programme guides that serve the various distribution platforms. This must be done in the terms established in article 6 of Regulation No. 36/2011 (Regulation governing the Access and Layout of Electronic Radio and Television Programme Guides), published in the Diário da República, 2nd series, no. 11, on 17 January 2011.

13.11. The production of subtitling specifically designed for those with hearing disabilities must take into account the specificities of the target audience, particularly as regards the representation of the spoken words and sound effects that are not audible to those with hearing disabilities. Additional information should also be given regarding any emotions evident in the tone and modulation of the voice, as should descriptive information about the music or any other features that carry narrative force.

14. As from 1 January 2019, and through to 31 December 2020, the space set aside on the screen for interpretation by means of sign language must comply with the following rules:

14.1. The area or window set aside for the interpreter must be no less than 1/6 of the total screen area.

14.2. The size of this overlay must ensure that the interpreter's bodily and facial expressions are clearly visible.

14.3. The colour of the interpreter's clothing must contrast clearly with the background and must be relatively plain and subdued.

14.4. This obligation shall take effect as from 1 January 2010 for those programme services covered by Chapter II of this multi-year plan.

IV. Recommendations

15. The Regulatory Board also recommends that television operators and operators of on-demand audiovisual media services make every effort to employ any new techniques that will enhance the accessibility of their television programme services and on-demand audiovisual media services from the point of view of those with special needs. In particular, operators are encouraged to make the most of any technological advances and improved digital platform capacities in their drive to satisfy the increasing demands and requirements pertaining to accessibility.

In order to raise the quality of the services provided to those with special needs, the Regulatory Board recommends the following:

15.1. The standardisation by television operators of the broadcast format of teletext subtitling, accompanied by the employment of a common adaptation code and agreed signage for the labelling of programmes that offer enhanced accessibility.

15.2. The expansion of subtitling for those with hearing disabilities to all programmes dubbed into Portuguese and to on-demand audiovisual content.

15.3. Enhancing the accessibility of programming aimed at children and young people for children with hearing disabilities.

15.4. The use of rewording techniques, or any other techniques that will improve the quality of the final product, in automatic subtitling processes.

15.5. Accessibility through subtitling, even where sign language is already used, to messages or communiqués from the President of the Republic, the President of the Assembly of the Republic or the Prime Minister, broadcast under article 30 of the Law on Television, or communiqués from the civil protection services.

15.6. The use of Portuguese language voice-overs for news bulletin items that contain excerpts spoken in foreign languages.

15.7. Employment of the most up-to-date speech synthesis programmes to transcribe broadcast contents, including across multi-platform scenarios involving the internet.

15.8. Adaptation of the websites run by television operators and by operators of on-demand audiovisual media services to the accessibility needs of those with special needs. This adaptation should be based on the most recent W3C Accessibility Guidelines for Web Content.

15.9. The dissemination of accessibility features, through teletext, websites and other methods, with programming announcements of the various programme services.

15.10. The retention and deployment of the various accessibility functionalities in the files generated by the automatic recording feature available through the set-top boxes supplied by service distributors, immediately after the broadcast of any programmes with enhanced accessibility.

15.11. The retention and deployment of the various accessibility functionalities on the television operator's website pages and in the video services provided by the same.

15.12. The deployment of easily understandable navigation menus on the various platforms that supply information on programme contents, particularly electronic programme guides and teletext services.

15.13. The employment of less intrusive techniques for the insertion of the Portuguese sign language interpretation window through the use of alternative forms that offer a better integration with the picture, such as the use of in-person and on-site interpreters that share the space with the main presenter.

15.14. Enhanced cooperation between television operators, associations representing those with hearing disabilities and appropriately qualified technicians, with a view to systematising the best practice rules for the sign language interpretation of television programmes, the codification of such rules and the quality control of the same.

15.15. Ongoing development of the audio description experience that includes the adaptation of texts to audiences with visual disabilities in those cases in which it is not possible to harmoniously merge the descriptive component with the original text, which may particularly be the case in the documentary genre.

15.16. The creation of specific television programmes for those with special needs, equally accessible to the target audience.

15.17. An understanding between the various operators regarding the sharing of knowledge and experiences, bearing in mind the fact that the public service television operator will provide technical cooperation in this regard.

V. Final provisions

16. The Regulatory Board will adopt all and any measures required to monitor and oversee the implementation of the initiatives envisaged in this decision, as well as those required for the study of any changes to be introduced into the plan as adopted.

17. The Regulatory Board will also:

a) Periodically publish the results of the implementation of this multi-year plan on ERC website;

b) Evaluate these results and the way in which they develop over time, for the purposes of measuring compliance with the objectives of television service provision, through an assessment of the fulfilment of the obligations and conditions to which the operators are bound, as well as for the purpose of interim evaluation and the renewal of licences and authorisations.

18. At any time, the Regulatory Board may revise the set of obligations established in this multi-year plan, in response to changes in technical or market conditions that occur during the term of the same, but without prejudice to the entities' legal entitlement to be consulted on the same.

Lisbon, 30 November 2016

The Regulatory Board,

Carlos Magno

Alberto Arons de Carvalho

Luísa Roseira

Raquel Alexandra Castro

Report on the stakeholder consultation held prior to the approval of the multi-year plan establishing the special needs accessibility obligations for television programme services and on-demand audiovisual media services.

I. INTRODUCTION

1. On 13 September of this year, ERC's Regulatory Board approved the project for the multi-year plan establishing the special needs accessibility obligations for television

programme services and on-demand audiovisual media services, in the terms stipulated in no. 3 of article 34 of the Law on Television.

2. As provided for in articles 121 and 122 of the Administrative Procedures Code and in conjunction with the provision referred to in the previous point, the following entities were notified of the stakeholder consultation process:

- Associação dos Cegos e Amblíopes de Portugal (ACAPO - Association for the Blind and Partially Sighted in Portugal)
- Avenida dos Aliados, Sociedade de Comunicação, S.A.
- Benfica TV, S.A.
- Canal Q, S.A.
- Canalvisão - Comunicação Multimédia, S.A.
- Cinemundo, Lda.
- Cofina Media, S.A.
- Dreamia - Serviços de Televisão, S.A.
- Económico TV - New Media, S.A.
- Federação Portuguesa das Associações de Surdos (FPAS)
- Filmes Hotgold - Cinema, Vídeo e Distribuição, S.A.
- FUEL TV EMEA, S.A.
- Instituto Nacional para a Reabilitação
- MEO - Serviços de Comunicações e Multimédia, S.A.
- Motes & Ideias, Lda.
- MTV Networks, Lda.
- NEXTV - Televisão, Rádio e Multimedia, S.A.
- NOS Comunicações, S.A.
- NOSPUB, Publicidade e Conteúdos, S.A.
- NOWO - Cabovisão - Sociedade de Televisão por Cabo, S.A.
- OSTV, Lda.
- Presselivre, Imprensa Livre, S.A.
- PT Comunicações, S.A.
- RTP – Rádio e Televisão de Portugal, S.A.
- SIC – Sociedade Independente de Comunicação, S.A.
- Sporting - Comunicação e Plataformas, S.A.
- Sport TV Portugal, S.A.
- STV - Sociedade de Telecomunicações do Vale do Sousa, S.A.
- TVI - Televisão Independente, S.A.
- Uniteldata Telecomunicações, S.A.
- Vicra Comunicações, Lda.
- Vodafone Portugal - Comunicações Pessoais, S.A.

3. This list includes all those entities that must be consulted, as per no. 3 of article 34 of the Law on Television. These are the National Institute for Rehabilitation, other entities representing people with disabilities, television operators and operators of on-demand audiovisual media services.

4. The following entities made submissions, which have been appended in the annexe to this report:

- Federação Portuguesa das Associações de Surdos (FPAS)
- Instituto Nacional para a Reabilitação
- NOS Comunicações, S.A.
- MEO - Serviços de Comunicações e Multimédia, S.A.
- RTP – Rádio e Televisão de Portugal, S.A.
- SIC – Sociedade Independente de Comunicação, S.A.
- Sport TV Portugal, S.A.
- STV – Sociedade de Telecomunicações do Vale do Sousa, S.A.
- TVI – Televisão Independente, S.A.

II. ANALYSIS

5. The submissions made by these entities have been summarised below and commented on by this regulatory authority.

6. Federação Portuguesa das Associações de Surdos (FPAS)

6.1. The submission made by the FPAS essentially comprises the following:

- a) **With respect to public service television:** the objective should be to subtitle 100% of broadcast programmes and to provide Portuguese sign language interpretation for 100% of news services and political debate and informational programmes, including those regional programmes designed for the Autonomous Regions.
- b) The obligations should be extended to other RTP programme services, such as *RTP3*, *RTP Memória*, *RTP África* and *RTP Internacional*;
- c) ARTV should be required to ensure that 100% of its broadcasts are accessible to all audiences;
- d) **With respect to private television operators:** the association believes the increases in subtitling and the use of Portuguese sign language have been minimal compared to what was stipulated in the previous plan;
- e) Ideally, all informational broadcasts should be 100% interpreted into Portuguese sign language, which is the same objective that the association has established for the public service;
- f) All foreign language programmes that have been dubbed should also be subtitled in Portuguese;
- g) **With respect to the supplementary rules:** point 13.1 should be broader in scope, as regards both the communiqués or messages that are to be made accessible and the use of appropriate techniques and technologies;
- h) The rules on the screen space set aside for the sign language interpreter should be applicable from the plan's start date;
- i) There should be a number of additional rules for the screen space set aside for the sign language interpreter. More specifically, the window should be vertical and not horizontal; from 2019 onwards, 1/5 of the screen should be set aside for this purpose; and the border that is sometimes placed around the window should be removed;
- j) Points 5.2 (programmes dubbed into Portuguese), 15.3 (programmes for children and young people) and 15.5 (messages or communiqués from the

President of the Republic, the President of the Assembly of the Republic or the Prime Minister) should be mandatory for public service television;

l) Point 15.14 (enhanced cooperation between television operators, associations representing those with hearing disabilities and appropriately qualified technicians) should refer explicitly to the best practices applicable to sign language interpretation for television and the competent institutions, of which the FPAS is one.

6.2. Comment

6.2.1. FPAS opted to focus its assessment on the specificities of the multi-year plan and did make an overall comment on its breadth and content. In terms of the obligations of public service television, we understand the focus on increasing both the quantity and quality of the services provided. However, we are of the opinion that the obligations established in the plan for the public service operator already constitute a significant step forward from the plan that is currently in execution. This means that we are meeting the legal requirement for gradual compliance with these obligations, as stipulated in article 3 of the Law on Television. The multi-year plan must always seek a balance between the fair expectations of the audience and the resources that the operators can be asked to deploy, as a direct function of existing technical and market conditions. This requires that we prioritise our options, even if this means temporarily postponing the meeting of such needs as those expressed by the FPAS in its submission.

6.2.2. Looking at the FPAS's suggestions in more detail, it is worth mentioning that the question of the format of the window for the sign language interpreter is addressed by point 14.2, in that this requires that the interpreter's bodily and facial expressions be clearly visible. We believe that this is sufficient to allay the concerns expressed by the FPAS in this regard.

7. National Institute for Rehabilitation

7.1. The INR stated that it has nothing to request and that it agrees with the contents of the multi-year plan. It believes that the plan could be fine-tuned, with the aim of ensuring that the maximum number of people have access to television programmes, thus respecting the rights enshrined in the Convention on the Rights of Persons with Disabilities, which Portugal has signed and ratified.

8. MEO - Serviços de Comunicações e Multimédia, S.A.

8.1. MEO began its submission by pointing out that it acts in a dual role as a television programme service provider. It is a distributor, responsible for selecting and aggregating television programme services and delivering these to audiences by means of its electronic communication networks. It carries out this business activity under the MEO brand name. It is also the holder of the right to use the DTT-MUX A frequencies, under ANACOM licence no. 6/2008.

8.1.1. As a distributor, and with respect to the provision of television programme accessibility features for audiences with special needs, MEO stresses that its own work is dependent on television operators implementing technical measures that are compatible with the distribution platforms and, furthermore, with the provision of the respective contents.

8.1.2. MEO points out and reaffirms that the implementation of the subtitling, audio description and interpretation by means of Portuguese sign language features described in the project depends on case-by-case analysis. This is because such features require the introduction of more contents (audio, video, data, etc.) and an increased use of limited resources (that is, bandwidth and satellite space) and this has cost implications and limitations that need to be carefully considered. The introduction of such features is further complicated by the technological restrictions inherent in the various television distribution platforms (IPTV Fibre, IPTV/ADSL and Satellite) and in the receiver equipment (set-top box). It is, thus, not possible to guarantee that these features can be delivered to all service subscribers.

8.1.3. The draft decision states that the obligations in the multi-year plan are binding on television operators, and are aimed at “programming services, irrespective of the type of electronic communication network used”. Despite this, MEO is of the opinion that the technical solutions to be adopted by the television operators should be specified and standardised on the basis of the technological restrictions inherent in the electronic communication platforms/networks actually used.

8.1.4. Furthermore, and given that the implementation of this feature, in the abovementioned terms, compromises the quality of signal retransmission, particularly in terms of video quality, it would be necessary to create alternative positions in MEO’s distribution service channel plan for such television programme services. These extra channels could be used to offer audio description, but this would be significantly more costly and there would be limitations that would need to be assessed. In the last resort, this could result in the operator having to cut back its television programme offer.

8.1.5. MEO is committed to finding ways and means to offer these services/functionalities in a more comprehensive manner and with a higher quality. Despite this, it cannot ignore the fact that, unless compatibility of the technical solutions used by the television operators with the network platforms and receiver equipment used by distributors is guaranteed, there is a significant risk that the implementation of television programme accessibility features for the benefit of those with special needs will prove impracticable.

8.1.6. The specific usability of navigation menus and electronic programme guides by people with special needs is tied to the technological restrictions implicit in the platforms and in the receiver equipment (set-top box). The feasibility of such features will need to be assessed on a case-by-case basis. The inclusion of labelling in the electronic programme guides to indicate the programmes that have this type of feature requires the television operators to provide the pertinent information.

8.1.7. The insertion of additional resources (audio, video, data, etc.) and the usage of limited resources (i.e. bandwidth and satellite space) involves additional cost and limitations that need to be taken into consideration.

8.2. On being asked for further clarification, MEO replied with the following details:

8.2.1. The current capacity set aside on the MUX A for DTT audio description is 0.064Mbps per television service programme, in the case of *RTP1*, *RTP2*, *RTP Madeira* and *RTP Açores*, and 0.096Mbps per channel in the case of *SIC* and *TVI*. Up to the present time, RTP is the only operator that has asked MEO to provide the audio description feature. MEO mentions that, following the instructions ensuing from Council of Ministers Resolution no. 37-C/2016, of 8 July 2016, and from Law no.

33/2016, of 24 August ANACOM is currently engaged in a period of public consultation regarding a draft decision to change the MUX A DUF. One of the aspects being reviewed is the reservation of capacity for the various services. Although, to date, this consultation is still ongoing, the capacity that MEO proposes to set aside for audio description is 0.064 Mbps per television service programme. There are no plans to set aside capacity for other accessibility features.

8.2.2. The current charging model for the provision of the DTT service, as established in the contracts signed between MEO and the television operators, is based on a single fixed annual fee. This fee covers all the contracted features and there is no breakdown of amounts by contracted feature.

8.2.3. When asked about the limitations that it mentions regarding the deployment of certain features via the MUX A, MEO stated that its intention was to raise awareness of the fact that, notwithstanding the imposition of certain obligations pertaining to the accessibility of television programme services on the part of those with special needs, namely the deployment of accessibility features through the DTT platform, this imposition and any actual delivery will be dependent on the capacity that is attributed/available.

8.2.4. MEO was also asked what it meant by “significant extra costs” and when an “extra band per 64 kb/s television programme service” would be necessary, when it referred to the provision of audio description as part of its distribution platform services, with particular reference to IPTV and satellite platforms. The operator replied that, in order to implement the audio description feature, the television operator would have to supply the television programme service signal with a second audio stream that would comprise a mix of the original audio and the audio description feature. The extra costs involved in implementing the audio description feature on the various platforms would depend on the solution that each television operator decided to implement. In the case of the satellite platform, the provision of the audio description feature, in the abovementioned terms, implies the use of spatial segment resources. This could affect the transmission quality of the signal (specifically, a loss of video quality) and lead to a need to assess additional costs. In the case of the IPTV platform, this feature would only be available in the fibre service offer and provided that the end-user’s receiver equipment is connected to a set-top box, as previously mentioned. Also in the case of the fibre service offer, this feature could be deployed through the Digital RF platform, provided that the customer's receiver equipment (television) supports such a feature. The provision of the audio description feature via the analogue RF platform is not technically viable.

8.2.5. MEO also pointed out that, in those cases in which the implementation of certain features, such as audio description, comprises signal retransmission quality (namely, video quality), it would have to create alternative positions on its channel plan. The use of new channel positions would not only require case-by-case assessment, given the restrictions inherent in each distribution platform, but it could also involve additional costs.

8.2.6. MEO was also asked to clarify whether or not it had receiver equipment (set-top boxes) capable of implementing the accessibility features stipulated in the plan. The operator replied that, although its set-top boxes were capable of deploying these features, the following had to be taken into account: (i) with respect to audio description: implementation would, primarily, be dependent on the television

operator providing the television programme signal with a second audio stream, which would comprise a mix of the original audio and the audio description; (ii) in the case of subtitling: this feature is currently supported on MEO platforms in the form of teletext pages, although there may be some cases in which the receiver equipment itself does not support this type of feature and these would need to be addressed; (iii) provision of Portuguese sign language interpretation: television operators have to provide the distributor with a signal in which the picture in the picture (PIP) overlays the original video, as MEO believes the alternative, in which television operators send two signals (the original signal and a signal with the PIP overlay) is not technically feasible.

8.2.7. In either case, the introduction of more contents (audio, video, data, etc.) implies the usage of limited resources (that is, bandwidth and satellite space, the usage of which would have to be analysed on a case-by-case basis). Therefore it is essential that television operators cooperate closely with distributors in order to find the best possible solutions, from both the customer experience point of view and from the point of view of reducing implementation costs.

8.3. Comment

8.3.1. Having taken note of the limitations highlighted by MEO, we are able to conclude that there are no critical or absolute restrictions that would make the deployment of the various features via the operator's various digital platforms (IPTV Fibre, IPTV ADSL and Satellite) unviable.

8.3.2. The technical solutions exist, each with its own cost structure. MEO points out that the key to attaining the proposed objectives is the degree of cooperation between distributors/platform operators and television operators.

8.3.3. We should also take into account the fact that the proliferation of television signal distribution platforms has a positive side, as it broadens choice and allows the user with special needs to select the platform that best meets their particular requirements. That is, while it may not be possible to include the best solutions for the implementation of all features on all platforms, it should increasingly become the case that a person with special needs can opt for a television distribution platform that provides all the features placed at its disposal by the television operators.

9. NOS Comunicações, S.A.

9.1. NOS reminds us that it has been developing and already offers its customers a set of facilities and features embedded in its television distribution services and on-demand audiovisual media services. These have been designed to meet the objectives established in previous approved multi-year plans as well as the one that is currently being considered. The operator not only takes into account the recommendations in these plans but also seeks to continuously improve the quality of the service it provides to all its customers, particularly those with special needs. It made specific mention of the films with audio description and sign language that it offers through its on-demand audiovisual media services.

9.1.1. In terms of television programme services, NOS highlights the fact that it is up to the television operators to implement the requisite technical means and to provide their broadcasts and any other necessary material required to meet their obligations with respect to special needs accessibility, particularly a regards audio description and subtitling. NOS distributes these broadcasts through its networks and systems in

exactly the same form as it receives them, barring any technical limitations or restrictions.

9.1.2. NOS is committed to incorporating the recommendations that impact on its business activity, specifically its on-demand audiovisual media services, into its processes and investment planning. It does hold, though, that effective implementation may be affected by technological limitations and constraints pertaining to its existing networks and customer equipment, particularly as regards the recommendation on recording, and by the appropriateness of any investments that need to be made. These circumstances need to be taken into account when assessing the operator's compliance.

9.2. We also asked NOS for further clarification and received the following replies:

9.2.1. NOS explained the capacity costs associated with audio description by referring to the standard definition of audio description as an additional narrated audio track that describes what is happening on screen. The extra capacity is required because the one more audio track has to be embedded in the video stream. Assuming that this track is provided by the television service operators together with the their video signals, the investment in question pertains to the transport across the networks that NOS operates (cable, FTTH, DHT). Coding of the audio may vary, but it may be assumed that it will equate to 5% of the bandwidth of a video signal. This would imply an annual cost of over €10,000 per channel and per network. Given that three channels are involved, the total annual cost would be over €30,000. This estimate only takes into account live transmission and not any non-linear broadcast.

9.2.2. The technical restrictions and constraints mentioned above only apply to the recording/non-linear component. The current network and systems solution that NOS employs allows for the overlay of both subtitles (if received via the equivalent of teletext) and an additional audio track for live broadcasts. In order to equip its system with the capacity to record programmes with the target features, NOS would have to develop a new platform from scratch. This would have to be compatible with, or duplicate, the full storage requirement associated with these programmes, so that it would be possible to save a copy with and one without these features. Neither of these scenarios would be very practicable and implementation would require an extended time frame.

9.2.3. All the interactive set-top boxes used by NOS would be equipped to access the features in live broadcast mode.

9.3. Comment

9.3.1. We are able to conclude, from NOS' submission, that there are no critical or absolute restrictions that would make the deployment of the various features via the operator's various platforms unviable. With respect to the operator's clarifications regarding the restrictions affecting the recording/non-linear component, we would make the same response as we did to MEO's submission on the matter.

10. RTP – Rádio e Televisão de Portugal, S.A.

10.1. RTP's position with respect to the multi-year plan may be summarised in the following manner:

- a) In general terms, RTP believes it to be extremely important that its broadcasts are made available to those with special needs, especially as

reaching all possible audiences without discrimination and promoting social cohesion and integration are all imperatives for any public service radio and television broadcaster. As a result, RTP should be at the forefront of any accessibility offer and it should serve as a benchmark for all other operators in the audiovisual market, just as it has done over the years.

b) RTP points out, nevertheless, that, given the significant demands of the plan that is currently in effect, it is engaged with a broad range of accessibility requirements. Many of these are proving difficult to implement, particularly as regards the focus on the issue of eligible genres and the (non) accounting of repeats. The new plan does not resolve these problems.

c) RTP also points out that it is charged with a much more extensive set of obligations than any of the private operators. This being the case, the revised plan, as drafted, would actually widen the already significant gap between the two types of provider.

e) As a result, the new multi-year plan put forward by ERC is unacceptable to RTP.

e) Some of the growth obligations have been set unrealistically high, in both quantitative and percentage terms, given that it is common knowledge that RTP is finding it exceedingly difficult to meet the targets of the current plan. This plan contains targets that are significantly more demanding than the previous one.

f) Imposing new quantitative and percentage obligations on RTP that are much higher than those imposed on private operators is discriminatory.

g) The plan restricts RTP's programming freedom and editorial independence, by requiring, with no sufficient legal basis, the broadcast of a minimum number of hours of certain genres of programmes, as the time-based targets for accessibility are deemed missed when such genres are scheduled for broadcast.

h) The plan does not take the same line as international initiatives to provide accessibility to those with special needs, because it focuses on programme genres and not just on hours or broadcast time percentages and also because it also does not allow for even one repeat of a programme.

i) The deadlines imposed on operators are unrealistically tight for the targets in question.

j) The opportunity has not been taken to align the obligations with the calendar year, as the targets for 31 January could be allowed to run through to the end of 2017. New obligations could then be brought in at the beginning of 2018.

l) Some of the recommendations are excessively burdensome and, as such, undoable.

10.2. Comment

10.2.1. The Law on Television obliges the public service television concession holder to make sure that people with special needs are able to follow its broadcasts, to the extent required by the schedule stipulated in the multi-year plan, "which takes into account the special responsibilities of the public service provider, as set out in the concession contract"³. The Public Service Radio and Television Concession Contract

³ See subparagraph j) of no. 2 of article 51 of the Television Law.

obliges the public service concession holder to ensure that, in its first service of generalist programmes provided on a national basis, this possibility of broadcast accessibility is established before and precedent to the conditions that apply to private operators⁴.

10.2.2. Given RTP's "special responsibilities" as the public service television concession holder, we cannot accept the criticism regarding the disproportionality of the obligations in question, particularly as, in percentage figures, these obligations have a very low starting point in terms of the broadcast hours to which they apply. For example, someone not in full possession of the facts might question why the weekly number of hours for sign language has increased by 100%, when compared to the current plan. However, the truth is that the current obligation is for 6 hours per week of signed programmes, which represents only 3.5% of the total broadcast hours. This means that we are still a long way off our objective of delivering fully accessible and inclusive television for those with special needs. Our final target could be no less than this, even though it means that 100% of the output would broadcast in an accessible format.

10.2.3. We should also not forget that the multi-year plan is intended to run over a full four years. This will allow the targets that are achieved to be satisfactorily stabilised and any additional costs to be defrayed over a considerable period of time.

10.2.4. RTP also argues that meeting the targets will be difficult "particularly as regards the focus on the issue of eligible genres and the (non) accounting of repeats". Here, it should be noted that it is the multi-year plan that is being innovative in its determination that genres should be subject to accessibility targets. The Concession Contract itself stipulates that certain programme genres should be focused on, whether these are cultural, recreational, educational or informational in nature⁵, and that it is a requirement that genre programming meets the needs of those who find themselves using accessibility tools.

10.2.5. RTP goes one step further in its desire to broaden the genre base for those programmes that are to be subtitled for the benefit of those with hearing disabilities. It is our understanding that the inclusion of programmes of an informational nature will not upset the logic or the balance of the plan and it is certainly technically possible to subtitle this type of programme in live broadcast mode. Thus, the final version of the plan will include informational programmes in the quota for subtitling that is specifically designed for those with hearing disabilities. This alteration in no way increases the plan's obligational burden. On the contrary, it actually broadens out the programme pool from which operators can select items to meet their accessibility obligations. We would also point out here that the automatic subtitling still used by RTP does not meet the requirements established in point 13.11 of the multi-year plan and that such subtitling cannot count towards fulfilment of this obligation.

10.2.6. With respect to the fact that repeats are not counted, we would draw attention to the fact that the draft plan allow for the first two broadcasts of each programme event to be counted⁶. Of course, RTP would prefer a larger number of repeats to count towards fulfilment of this obligation. However, the plan has been drawn up on the basis of meeting audience needs, although it does take into account all the limitations

⁴ Cf. Subparagraph l) of no. 2 of Clause 6 and no. 4 of Clause 9 of the Concession Contract.

⁵ Cf. No. 4 of Clause 9 of the Concession Contract.

⁶ See point 13.3 of the Draft Multi-Year Plan.

inherent in each operator's business activity. This is why it makes no sense to allude to the fact that repeats may reach a wider audience. This may well be the case but it is of little import in an era in which viewers are able to watch programmes after they have been broadcast, on a day and at a time that suits them. A number of studies have shown that television is increasingly less consumed as a live broadcast experience.

10.2.7. Moving on in our analysis of the argument put forward by RTP, we believe that, if there is a need to delay the introduction of the new obligations, it requires much clearer justification. In fact, it is not true to say that new demands have been made, at least not as far as the underlying obligations are concerned. The obligations that were there before are still there (subtitling specifically designed for those with hearing disabilities, interpretation in the form of Portuguese sign language and audio description). As of 1 February 2017, and in the case of *RTP1*, the subtitling requirement only increases by 4 hours per week (from 16 to 20 hours) and the sign language requirement by 6 hours per week (from 6 to 12 hours). In other words, the nature of the obligations remains the same. The technical and operational solutions are already in place and all that has changed is the (moderate) increase in the number of hours. Furthermore, the number of audio description hours has not changed for *RTP1* and has been set at 20 hours for *RTP2*. Moreover, this obligation is measured on an annual basis, which gives the operator a great deal of flexibility in its handling of this resource.

10.2.8. Nevertheless, and because the first implementation year of the multi-year plan only covers 11 months (from 1 February to 31 December 2017), the target has been amended to take into account this shorter time. A reduction has been proportionally applied to the audio description target, which is the only obligation that is measured on an annual basis.

10.2.9. Point 4 of the draft plan proposes a widening of the time frame and that the start of this time frame be moved to 8 am, which we see as perfectly feasible. Thus, between the hours of 8 am and midnight, the operator must broadcast four hours per week of informational programme with interpretation in the form of Portuguese sign language in its programme services that are predominantly informational in nature and that comprise part of the public service television offer. Naturally, this widening of the time frame should also be applied to the generalist and thematic programme services provided on a national basis with non-conditional access, subject to payment of a subscription, as referred to in point 10 of the draft plan.

10.2.10. RTP also makes a point about respect for the integrity of the work as a whole, as affected by the provision of subtitles for those with hearing disabilities or interpretation by means of Portuguese sign language or audio description, so that the entirety of the work may be enjoyed by that part of the audience that makes use of such features. It states that compliance with this stipulation may "in the last resort, and as far as RTP is concerned, imply an increase in the obligations established in Chapter I for public service television". It adds that "in agreeing with the principle that the audience should not be deprived of being able to follow an audiovisual work in its entirety, even where it is broadcast in instalments over a period of time, RTP believes that any addition to the obligational schedule ensuing from the application of this point will be rebalanced in subsequent time periods. In other words, under-compliance in a subsequent period may be seen not as a non-compliance but as compensation for an over-compliance in the preceding period".

10.2.11. In this regard, we understand that the plan should set minimum objectives and that operators should be free to manage their programming within the constraints that this might involve. The institution of a compensation system would make ERC's task of controlling obligation compliance that much more difficult. We fail to see that the planning of a series that is to be made accessible to those with special needs would involve anything other than ensuring, from the start, that all episodes in the series would be covered by this requirement, a process with which RTP is fully familiar.

10.2.12. RTP also believes that point 13.8 requires clarification. This point states, as does the plan that is currently in execution, that the principle of programming independence will be observed when assessing compliance with the obligations in Chapters I and II and this plan may not impose restrictions on the choice of programmes to be broadcast. RTP's reading of this point is correct when it states that "this standard appears to mean that the editorial criteria and the programming chosen by television operators, in accordance with their right to do so, as enshrined in no. 2 of article 26 of the Television and On-demand Audiovisual Media Services Law, should not be altered specifically and solely for the purposes of compliance with the multi-year plan and the obligation in terms of programming hours established therein". We see no call to read this in any other way. At the time of the approval of the multi-year plan that is currently in implementation, ERC stated the following in its report on the stakeholder consultation process, repeated here to reassure RTP:

"It is also the case that ERC respects the principle of operator programming independence. Having issued this statement, ERC would, in the final analysis, understand if a programme service did not meet certain quotas because it did not broadcast programmes of the genre or type that comprise the quotas in question. We find it highly unlikely that such a situation would arise, because, were this to occur, ERC should ask the programme service about its compliance with the objectives of its television activity or about its compliance with the television project established in its license, authorisation or concession."

10.2.13. Finally, and with respect to RTP's reservations regarding the recommendations, ERC finds that it must emphasise the importance of these, irrespective of how difficult compliance may be. The fact that we recognise this difficulty is precisely why they have been presented as recommendations and not obligations. However, it is our sincere hope that, with the development of these services for people with special needs, all or part of these recommendations will become an integral part of the everyday practices of television operators. As these recommendations are addressed to all television operators and not specifically to RTP, they should not be taken into account in any assessment of RTP's (non) compliance with the Concession Contract.

11. SIC – Sociedade Independente de Comunicação, S.A.

11.1. The following summarises SIC's submission to the consultation process:

- a) In recent years, SIC has sought to cover many of the accessibility obligations and has gone far beyond its self-regulation commitments, in some cases. Its work in this area culminated in the signature of the RTP/SIC/TVI Protocol on 21 August 2003, later amended by the Addendum dated 15 February 2005.

- b) Conditions in the audiovisual sector remain adverse, particularly as regards the generalist programme services provided on a national basis with free non-conditional access. This incontrovertible fact has required SIC to make an extra financial effort, in order to meet its obligations under the current multi-year plan.
- c) It is the case that the television operators who are required to fulfil accessibility obligations are still unable to assess with any transparency or objectivity, the impact of the technical and financial effort that is asked of them. They are also unable to assess the level of uptake or, concomitantly, of satisfaction of those people with special needs that might make use of accessibility services.
- d) SIC opted to focus its comments on the changes as a whole, concentrating on the suggested *modus operandi* for fulfilment, with which it fully agrees.
- e) SIC expressed its satisfaction with the care taken by the regulator in setting the values for each of the obligations, as it is evident that the regulator has sought to arrive at a balance between the obligation demands in the current plan and those that it proposes for the future.
- f) SIC notes that the values established by the Regulatory Board in the draft plan that was submitted to stakeholder consultation more closely accommodate the constraints that television programme services provided on a national basis with free non-conditional access continue to discuss, in the context of a fragile audiovisual market, in which advertising income has been falling sharply since 2009.
- g) In its ongoing discussions with ERC regarding compliance with audio description accessibility, SIC has drawn attention to the fact that this demand is not feasible in the DTT network, given the lack of a common technical standard for set-top boxes that would allow people with special needs to access this type of service.
- h) SIC also mentions, in relation to broadcasts over the DTT network, that, according to the most recent data published on ANACOM's website, only 11.9% of the Portuguese population receives the signal distributed by generalist television operators by means of this network.
- i) In SIC's specific case, and as is common knowledge, it is not possible to make use of the medium wave radio frequency to transmit a descriptive audio narration of the broadcast pictures.
- j) Finally, SIC is perplexed by the likely absence of a set of obligations that align with the government's decision, which has already been disseminated, to include the *RTP3* and *RTP Memória* programme services in the portfolio of television programme services provided on a national basis with free non-conditional access.

11.2. Comment

11.2.1. SIC pointed out that it had expected the draft plan to be accompanied by a report on the fulfilment of the obligations in the current multi-year plan and an analysis of the impact and return that the accessibilities had with respect to the target audiences. In response, we would say that all and any information that can be obtained regarding such issues is always relevant. We would also make it clear that the

approval of accessibility objectives and targets cannot be dependent on any economic return, whatever the nature of this might be. In fact, all the stakeholders in this matter are aware of the fact that accessibility intervention is aimed at a small section of the overall market. This is what makes it so relevant, as it is a fundamental tenet of democratic societies that the interests of minorities should be properly safeguarded, both when it comes to the provision of equal opportunities for the exercise of citizenship rights and to ensuring that such minorities have equal access to information, culture and entertainment. Even where such a desideratum requires society to make an extra effort. The spirit of the law tells us that we cannot make the implementation of accessibility requirements depend on any quantitative assessment of their impact, beyond the manner in which they pertain to verifiable technical and market conditions.

11.2.2. It should be noted that ERC oversees television operator compliance with the multi-year plan on an ongoing basis. The resulting data is published in the annual ERC's Regulation Report, which can be downloaded from the organisation's website. The data pertaining to last year are summarised in the 2015 Regulation Report. More specifically, the information on private television operators can be found from page 560 onwards in the same report.

11.2.3. In addressing SIC's observations regarding audio description in the DTT network we would call attention to the submission made by MEO - Serviços de Comunicações e Multimédia, SA. From this contribution, we can deduce that their set-top boxes are prepared to deliver this feature and that there is reserved capacity for television operator audio description. Moreover, this capacity has already been called upon by RTP.

04/02/2011. SIC makes a point regarding "the likely absence of a set of obligations that align with the government's decision, which has already been disseminated, to include the *RTP3* and *RTP Memória* programme services in the portfolio of television programme services provided on a national basis with free non-conditional access". We would reply that the multi-year plan is abstractive in nature and should be applied to the various programme services as a function of their type and characteristics. Thus, as little was known at the time about the model for the programme services in question, only time will tell if some of the obligations will be applicable to them. It should be made quite clear that *RTP3* has been given responsibility for complying with a number of requirements in the "Thematic programme services that are a predominantly informational in nature" chapter of public service television.

11.2.5. However, and despite the fact that SIC has offered a number of criticisms, ERC notes that, in overall terms, this operator's contribution acknowledges the positive aspects of the plan. This, of itself, engenders a sense of optimism regarding SIC's performance in the implementation of the planned objectives.

12. Sport TV Portugal, S.A.

12.1. Sport TV Portugal, S.A. has called attention to the following:

12.1.1. With respect to paragraphs 10 and 10.1 of the draft plan, entitled "Generalist and thematic programme services provided on a national basis with non-conditional access, subject to payment of a subscription", the latter paragraph contains a mistake, as it reads "thematic programme services provided on a national basis, with conditional access, subject to payment of a subscription", when it should read

“thematic programme services provided on a national basis with non-conditional access, subject to payment of a subscription”

This mistake will be corrected in the final version of the plan.

12.1.2. Sport TV has nothing against anything else in the plan and merely requests that, should the decision be approved, the mistake in question is corrected.

13. STV – Sociedade de Telecomunicações do Vale do Sousa, S.A.

13.1. This entity informs us that it resells analogue television channels.

13.2. Comment

13.2.1. STV – Sociedade de Telecomunicações do Vale do Sousa, S.A. is registered at ERC as distributor. Its participation in this exercise, as an owner of electronic communication networks, is important because it can reflect on the limitations of such networks when it comes to the provision of the planned services.

14. TVI – Televisão Independente, S.A.

14.1. The main key and general points made by TVI in its submission are as follows:

14.1.1. The draft plan is essentially an extension of the current multi-year plan, which, in turn, is based on a distortion: the current multi-year plan has imposed obligations relating to the introduction of features specifically geared towards people with special needs on the private operators SIC and TVI, who were not offered any kind of compensation or consideration. Could not this multi-year plan have been based on obligations accepted by the operators in exchange for compensation that would cover the costs associated with fulfilling the obligations in question, in the terms of the protocol signed by RTP, SIC and TVI on 21 August 2003?

14.1.2. The state is essentially and primarily responsible for policies that aim to help people with special needs. The state should defray the cost of implementing this policy and support private entities that do the work of promoting and developing the national policy for the prevention, empowerment, rehabilitation and participation of people with disabilities. However, the draft plan does not offer any form of support or incentive to television operators that would offset the costs that they will incur in complying with the obligations that have been imposed on them.

14.1.3. The draft plan also makes no specific mention of any market conditions that the regulator may have taken into account. It limits itself to stating that taking such conditions into account is a necessity, without going into any detail beyond a simple concluding opinion. There is no information on any statistical or accounting data - no figures that speak to the facts or trends pertinent to the context.

14.1.4. TVI emphasises that ERC failed to notify it that it was launching a procedure that could result in the establishment of obligations that would also specifically apply to TVI and that such obligations might infringe TVI’s legally protected rights or interests. This constitutes a breach of the provisions of article 110 of the Administrative Procedures Code.

14.1.5. TVI also states that the way in which this procedure has been informed is clearly deficient. Not only has there been no attempt to address market issues, but, further, neither the process nor the draft plan at issue here contain the information that should precede the drafting of the multi-year plan.

14.1.6. Finally, TVI also expresses its view that neither the process nor the draft plan allow it to reconstruct the decision-making process followed by ERC in its selection of certain solutions over others. There is no indication, for example, as to why some quotas were increased and yet others were not, why some quotas are increased in the first part of the plan but others are not. There is no mention of the criteria that would explain the distribution of the effort of implementing the various types of features across the different types of channel or of why certain types of programming were chosen rather than other types or genres. Furthermore, it is not clear what circumstance determines that only television programme services subject to Portuguese government oversight are covered by the provisions of the draft plan.

14.1.7. Nevertheless, in overall terms, the draft document sets out a multi-year plan that is substantially and more realistic than the previous plan, in all key areas. This achievement is worthy of a positive mention.

14.1.8. This positive assessment of the draft plan as a whole is largely attributable to the fact that it provides for the gradual growth in the quotas that are to be implemented. This is true in temporal terms, with the splitting of the draft plan period into two parts, and also because the second broadcast of a single programme event can be counted towards the quotas.

14.1.9. In its more specific comments, TVI raises a number of questions in greater detail. In this operator's view, these issues should be rethought and reassessed by the regulator, as is made clear in the comments below.

14.2. Comment

14.2.1. Using similar arguments to those that it put forward as part of the discussion that preceded the current plan, TVI insists that the costs of implementing television broadcast accessibility measures for the benefit of those with special needs should be defrayed by the state. It decries the fact that there is no such funding mechanism in place for television operators. In making this point, it invokes Law no. 38/2004, of 18 August, which establishes the General Basis of the Legal Framework for the Prevention, Empowerment, Rehabilitation and Participation of People with Disabilities.

14.2.2. ERC reiterates the grounds that it advanced during this discussion, namely:

“ERC is fully aware of the fact that the implementation of the measures that ensue from compliance with the plan will necessarily imply cost outgoings for the operators. These costs are unavoidable and were taken into account during the evaluation phase that was part of the plan approval process. Thus, this regulatory authority contends that the bill for such costs, which should always be relativized when compared to the overall operating costs for a television programme service, cannot be held to be some form of extravagant or extraordinary expenditure, as if it were something that fell outside the scope of a television operator’s normal business activity. These costs are inherent to the fulfilment of the purposes established for the television business by article 9 of the Law on Television. That is, television services must contribute to the informing, training and entertainment of their audiences and also promote citizenship. These aims were clearly drafted with the intention of not marginalising those with special needs. From a more general perspective, these same costs should be apportioned to the company’s social responsibility work and defrayed by its respect for the principles of cooperation and social

solidarity. This interpretation is supported by articles 14 and 15 of Law no. 38/2004, of 18 August, which establishes the General Basis of the Legal Framework for the Prevention, Empowerment, Rehabilitation and Participation of People with Disabilities. In short, the focus here is on the social cohesion to which article 20 of the Basic Law makes reference, as enabled by the promotion and fulfilment of the economic, social and cultural needs of people with disabilities.”

Further:

“Moreover, there are no viable grounds on which TVI can claim state aid or incentives as compensation for the outgoings it incurs in implementing the multi-year plan satisfactorily, either for itself or for any other television operator. In fact, article 43 of Law no. 38/2004, of 18 August, which establishes the General Basis of the Legal Framework for the Prevention, Empowerment, Rehabilitation and Participation of People with Disabilities establishes special obligations for media organisations. These involve ensuring that information is delivered in a manner that is accessible to people with disabilities and also helping to raise public awareness of the disability issue, as a way of eliminating discriminatory practices based on disability. In the chapter in which this standard appears (Chapter V - Transversal policies), the state’s responsibilities, on the one hand, and those of private and public entities, on the other, are made quite clear. It is also emphasised that the principles of cooperation and social solidarity are transversal to these separate and legal responsibilities. The funding mechanism for the implementation of Law no. 38/2004 is addressed in articles 48 and 49 of the same. Here, it is explained that the charges to be written into the budgets of the various ministries involved pertain to the implementation of public policy in their respective fields. Thus, there is no legal instrument, or any other mechanism, for funding television operators. In any event, it may also be said that the state does not limit its actions to imposing obligations on private operators, through the concession and funding of public service television. It also plays a role in implementation, by determining the added responsibilities that are to be imposed on the incumbent.”

14.2.3. Despite TVI’s objection regarding the funding of the measures stipulated in the multi-year plan, the truth of the matter is that, on this occasion, as in the past, it has not submitted any cost projections based on the implementation of the measures. This is not to say that it would be up to ERC “to offer a detailed breakdown of the costs and the results or proceeds of each measure that it seeks to implement”. Such calculations would, necessarily, have to be made by the operators, as they are able to see the matter from a business perspective and can apply their negotiating skills to determine prices that would much more closely reflect the actual costs of the operation. This is not to say that ERC is blind to the financial effort that operators are obliged to make in meeting the obligations that have been imposed on the programme services that they run.

14.2.4. TVI also mentions that the draft plan also makes no specific mention of any market conditions that the regulator may have taken into account. This is not entirely the case. As TVI itself mentions, ERC carried out specific diligences involving both the

distribution operator and the DTT network operator. In addition to this, the preamble to the draft plan states the following:

“Noting that market conditions, despite still being adverse for the various agents, particularly those working in advertising, do not appear to indicate that business profitability is at risk in most companies and that, on the contrary, many businesses have shown that they have been able to adapt their cost structures, as detailed in ERC’s latest Regulatory Report, published in 2016”.

14.2.5. In its rationale for the draft plan, ERC states:

“Although there are costs involved in the operators’ investments, it may be assumed, until proved otherwise, that the financial requirements of the multi-year plan are modest when compared to the overall costs of operating a television programme service. Market conditions have also prevented more from being done in terms of delivering accessibility services. Nevertheless, after having looked at the objective reality that only numbers can provide, the Regulatory Board believes that the difficulties that are felt by the public and by businesses are not sufficient reason for bringing the process that this multi-year plan underpins to a halt.

14.2.6. The law does not require any market studies or any other kind of study, merely that the market conditions at any given time be taken into account. Yet, it seems to have escaped TVI’s attention that the reference made to the “last ERC’s Regulation Report, published in 2016”, which is the 2015 Regulation Report, was no mere aside. In fact, this report contains an extensive “ECONOMIC AND FINANCIAL ANALYSIS OF THE MEDIA SECTOR IN PORTUGAL, 2015”⁷, which TVI may find worth perusing. This confirms that ERC does, indeed, pay close attention to the matter of market conditions and obviates TVI’s suggestion that it would be a good idea to take market conditions into account when compiling the multi-year plan. Besides, operators’ financial results are public and accessible. This is certainly the case for TVI, whose quarterly results are disclosed in the reports issued by Grupo Media Capital, SGPS, S.A. For example, the report “Results for January to September 2016” states that net profits at Grupo Media Capital went up by 7% over the period, to €8.8 million”. It can also be seen, in the specific case of the television business, that advertising revenues rose by 3% year-on-year, or by 5%, if the first nine months of 2016 are compared with 2015. These are, without doubt, positive indicators for the television operators’ business, especially if we take into account the paradigm shift that is taking place in this particular market. These figures give rise to a degree of optimism and the conclusion that it is possible to increase accessibility feature requirements, provided this is done in an entirely reasonable manner. This reasonableness comprises an understanding of the economic constraints faced by operators and of the financial situation they find themselves in. These factors make it impracticable to institute any substantial increase in accessible broadcast percentages that would bring these anything like close to the target of 100% accessible broadcasting. They also show the extent to which ERC complies with the law by taking market conditions into account when it draws up the multi-year plan.

14.2.7. TVI also claims that there has been a lack of procedural diligence, the procedure has been poorly informed and requires better substantiation. First off, we note that TVI has not drawn any legal conclusions or consequences from these alleged shortcomings. The current procedure for the approval of the multi-year plan is atypical

⁷ See page 87 and subsequent of the said report, which is available on ERC’s website.

in nature, in that it is different from the ordinary administrative procedure that feeds into the carrying out of an administrative act. The truth of the matter is that this procedure was not dreamed up in the minds of private individuals nor is it a purely officious management-launched initiative, as the law requires it to be produced within a certain time frame and to adhere to certain conditions. In some ways, the procedure is more like an administrative regulation. However, regardless of any discussion as to the nature of the procedure, it is certainly the case that it abided by its guiding principles. In particular, it adhered to the pre-approval consultation process involving all the entities referred to in no. 3 of article 34 of the Law on Television. All other mandatory conditions pertinent to the preparation of the plan were also met in full. For all intents and purposes, the procedure began on 13 September 2016, with the approval of the draft plan by ERC's Regulatory Board. All stakeholders, including TVI, were immediately informed of this. All the diligences carried out before the approval of the draft plan were merely preparatory in nature. Like other such diligences that have been carried out during the term of the plan that is currently in force, they were simply designed to smooth the way to a future decision on the new plan. We refer here to the meetings that have been held to discuss this issue and have involved the television operators and distributors, associations representing people with disabilities and public entities. We have also gathered a significant amount of information on operator practices over the years and have monitored developments in the market and in the technical infrastructures available to the various stakeholders, on an ongoing basis.

14.2.8. It is not TVI's job to direct the management of the procedure, so ERC is in no way obliged to carry out the diligences that it mentions in its submission. ERC does carry out the diligences that it deems necessary and indispensable to the smooth running of the procedure and the attainment of the legally established outcomes. In this same regard, and as concerns the alleged lack of assessment of compliance with the obligations in the plan, we would refer to the comments made by SIC, point 11.2.1 above. We would also point out that the monitors television operator compliance with the multi-year plan on an ongoing basis and the results of this oversight are published annually in ERC's Regulation Report, which is available on the organisation's website. The data pertaining to last year are summarised in the 2015 Regulation Report. More specifically, the information on private television operators can be found from page 560 onwards in the same report. This report includes pertinent submissions from the distributors that dispel the doubts raised by TVI regarding the operational capabilities of the set-top boxes deployed by these same distributors.

14.2.9. TVI also expresses the view that neither the procedure nor the draft plan allow it to reconstruct the decision-making process followed by ERC in its selection of certain solutions over others. Decision-making of this type always involves an element of discretion. Furthermore, ERC believes that, by consulting the rationale that precedes the draft plan, the preamble to the plan and this report itself, it is possible to draw out the guidelines that specifically govern the establishment of the measures that are to be built into the plan.

Thus, the rationale states:

“Therefore, the approval of this multi-year plan is guided by two consciously confirmed indicators.

(...) The first of these lies in the need to consolidate what is already deliverable to the target audience, whilst also indicating that the offer needs to be extended, even if moderately so, and its quality enhanced. One example of enhanced quality might be the requirement regarding the on-screen area set aside for the sign language interpreter.

(...) The second indicator is clearly emphasised by the role played by the public service operator. This role, which is stipulated both in law and in the concession contract, involves attaining levels of compliance that are ahead of those required of the private operators and building towards what is deemed to be an acceptable end-goal in a democratic society that wishes to ensure equality opportunity for all its citizens. It is also hoped that this leveraging role played by the public service television operator will take the matter even further, in terms of the degree of cooperation established with the private operators, although this falls somewhat outside the strict purview of the multi-year plan.”

In short, one of the main proposals in the 2017/2020 plan is to consolidate measures that have already been implemented, enhancing their value in the light of current market conditions. Another is to ensure that the public service engages fully with the special role that it has been assigned, which is to attain its goals before the private operators are required to do the same. This is why, generally speaking, the increases in broadcast hours for private operators have been largely concentrated in the second, later, part of the plan, whereas the targets that the public service has been set are mostly clustered in the first part of the plan.

14.2.10. In its more specific comments, TVI begins by setting out a number of views regarding the public service provision. A careful reading of the proposals reveals that, in the current state of the accessibility service offer and out of respect for the established balances, there is support for a continuation of the regional programme service obligations as they are stated in the plan. However, this should not preclude the possibility of news services also being made more accessible through sign language interpretation. With regard to the programmes that are to move to the DTT platform - *RTP3* and *RTP Memória* - we would refer back to our comment on the submission made by SIC, see point 11.2.4.

14.2.11. We would clarify the fact that *Canal Parlamento* is not subject to the supervisory oversight and intervention of ERC's Regulatory Board, as per article 6 of this entity's articles of association. This is because the entity responsible for this service is not in the media business. The same could be said of the programme services that do not fall under the jurisdiction of the Portuguese state, for different reasons⁸, and despite the concern that these television programme services are having an increasingly significant impact on Portugal's audiovisual scene.

14.2.12. Finally, in relation to TVI's observations on the various supplementary rules, ERC takes the following position:

⁸ See article 3 of the Television Law, which addresses the scope of application of the law.

- a) We would point out broadcasting messages or communiqués from the President of the Republic, the President of the Assembly of the Republic or the Prime Minister is, for all intents and purposes, an obligation, under article 30 of the Law on Television. Such broadcasts do not often require the mobilisation of resources mentioned by TVI. We do not believe that it is necessary to have resources on permanent standby for the purposes of complying with this obligation, particularly in an era in which these acts of communication have reached the stage of development that they have.
- b) The obligation requiring pre-campaign and in-campaign election debates between political candidates to be interpreted by means of Portuguese sign language is perfectly workable, despite the difficulties that might be faced by any interpreter or mediator, and not specifically by a sign language interpreter. The debates held during the last US elections were a good example of this. In these debates, multiple interpreters were used - one for each speaker. However, the main driver here is citizenship. It is crucial that people with hearing disabilities have access to all the important moments in the democratic process, including election debates.
- c) We would reiterate the idea that it is unreasonable to make only a part of a series of programmes accessible through sign language. Viewers would lose track of the audio visual contents and/or narrative flow as whole, which is why there can be no waiver of the principle of integrity. Nevertheless, a television operator does have the power to manage the contents that are to be broadcast to the audience and is also able to adjust its usage of accessibility tools as a function of the length of the work and of the resources to hand.
- d) Point 13.8 of the draft plan makes it clear that the principle of programming independence will be observed and that no constraints will be placed on the choice programmes to be broadcast, in the precise terms mentioned by TVI. Having reiterated our respect for this principle, we see no need to rewrite point 13.8⁹.
- e) As regards the sign language window, ERC also believes that television operators should work together with the distributors and the operator of the DTT network to look into technical solutions that are more comfortable for all users. However, the multi-year plan is designed to be technologically neutral. It sets out objectives and targets but refrains from stipulating which resources are to be used to attain these. Without prejudice to ERC recognising the relevance of the technical conditions that enable the use of the accessibility features in the plan, as the law itself requires, it is of primordial importance that we ensure that accessibility is viable and that the technologies, whatever they may be, are affordable and that they lie within the reach of the various operators.

⁹ See point 10.2.12 of our commentary on exactly the same point raised by RTP.

III. CONCLUSION

15. With the consultation process having run its course, and in the terms of no. 3 of article 34 of Law no. 27/2007, of 30 July (Television and On-Demand Audiovisual Media Services Law) ERC's Regulatory Board approves the multi-year plan establishing the special needs accessibility obligations for television programme services and on-demand audiovisual media services. It further approves this report, which, for all due and legal purposes, is deemed an integral part of the said multi-year plan.

Lisbon, 30 November 2016

ERC's Regulatory Board

Carlos Magno

Alberto Arons de Carvalho

Luísa Roseira

Raquel Alexandra Castro

Annex

Rationale to accompany the draft multi-year plan approved by ERC's Regulatory Board on 13 September 2016.

1. No. 3 of article 34 of Law no 27/2007, of 30 July (Television and On-demand Audiovisual Media Services Law) establishes that the Portuguese Regulatory Authority for the Media, having consulted the National Institute for Rehabilitation, other entities representing people with disabilities, the television operators and the operators of on-demand audiovisual media services, should determine the special needs accessibility obligations for television programmes and on-demand audiovisual media services. Such obligations may involve subtitling, sign language, audio-description or other techniques deemed appropriate and also the availability of easily understandable navigation menus. Such obligations are to be written into a multi-year plan that allows

for a gradual implementation that takes into account the technical and market conditions observed by ERC at any given time.

2. ERC's Regulatory Board approved the multi-year plan that is currently in effect, and which comes to term on 31 January 2017, by means of Decision 4/2014 (OUT-TV), dated 2 January 2014. It is, therefore, essential to ensure the continuity of the legal requirement by approving what will be the 3rd multi-year plan.

3. It should not be thought that this act is motivated by a mere bureaucratic wish to perform with a legal duty. In fact, the whole process that leads up to the preparation and approval of the multi-year plan reflects a desire to maximise participation so as to give true form to an objective. That objective is to attenuate the difficulties encountered by those who are the whole reason for this plan in realising their entirely justified expectations of the accessibility of the information, culture and entertainment that television can provide.

4. The fact that this is the 3rd multi-year plan means that we have now accumulated considerable experience on the issues surrounding accessibility. Unfortunately, we cannot, however, claim that the offer of accessibility tools has grown at the same rate as our experience. If the truth be told, the current offer is clearly insufficient, despite the efforts that have been made by the operators to ensure that the offer is available. This is because it only covers a tiny percentage of the total number of hours broadcast by the various programme services,

5. It is a given that, in today's world, technology has allowed us to provide more and better services in this area. Although there are costs involved in the operators' investments, it may be assumed, until proved otherwise, that the financial requirements of the multi-year plan are modest when compared to the overall costs of operating a television programme service. Market conditions have also prevented more from being done in terms of delivering accessibility services. Nevertheless, after having looked at the objective reality that only numbers can provide, the Regulatory Board believes that the difficulties that are felt by the public and by businesses are not sufficient reason for bringing the process that this multi-year plan underpins to a halt.

6. Therefore, the approval of this multi-year plan is guided by two actively accepted indicators.

7. The first of these lies in the need to consolidate what is already deliverable to the target audience, whilst also indicating that the offer needs to be extended, even if moderately so, and its quality enhanced. One example of enhanced quality might be the requirement regarding the on-screen area set aside for the sign language interpreter.

8. The second indicator is clearly emphasised by the role played by the public service operator. This role, which is stipulated both in law and in the concession contract, involves attaining levels of compliance that are ahead of those required of the private operators and also building towards what is deemed to be an acceptable end-goal in a

democratic society that wishes to ensure equality opportunity for all its citizens. It is also hoped that this leveraging role played by the public service television operator will take the matter even further, in terms of the degree of cooperation established with the private operators, although this falls somewhat outside the strict purview of the multi-year plan.