

**ASSEMBLY OF THE REPUBLIC**

**Law No. 74/2020**

of 19 November

*Summary:* Law No. 74/2020 transposes into Portuguese law Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Law No. 27/2007 of 30 July on Television and On-demand Audiovisual Services, and Law No. 55/2021 of 6 September on the foster, development and protection of film art and cinematographic and audiovisual activities.

The Assembly of the Republic, pursuant to Article 161(c) of the Constitution, hereby decrees the following:

**Article 1**  
**(Subject matter)**

This law transposes into Portuguese law Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on 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) in view of changing market realities, thus introducing:

- a) The fifth amendment to Law No. 27/2007 of 30 July on Television and On-demand Audiovisual Services amended by Law No. 8/2011 of 11 April, Law No. 40/2014 of 9 July, Law No. 78/2015 of 29 July, and Law No. 7/2020 of 10 April;
- b) The third amendment to Law No. 55/2012 of 6 September on the foster, development and protection of film art and cinematographic and audiovisual activities amended by Law No. 28/2014 of 19 May, and Law No. 82-B/2014 of 31 December.

**Article 2**  
**Amendment to Law No. 27/2007 of 30 July**

Articles 1 to 3, 4a, 6, 9, 19, 25, 27, 28, 30, 34, 40, 41, 41a, 45, 46, 49, 51, 55, 75 to 77, 86 to 86b and 93 of Law No. 27/2007 of 30 July are replaced by the following:

«Article 1  
(...)»

The purpose of this law is to regulate the access and pursuit of audiovisual media services, including television and on-demand audiovisual services, as well as certain aspects of video-sharing platform services and respective content provided to the public, transposing into Portuguese law Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on 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) in view of changing market realities, hereinafter referred to as Audiovisual Media Services Directive.

Article 1a

(...)

1 - The rules concerning information society services and electronic commerce in Decree-Law No. 7/2004 of 7 January shall also apply to on-demand audiovisual services and video-sharing platform services, which shall suit their nature, and provided that they do not deviate from the provisions of this law.

2 - .....

Article 2

(...)

1 - .....

a) .....

b) .....

c) .....

d) "Product placement" means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration;

e) "Audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping, product placement, production aids, telepromotion and self-promotion.

f) .....

g) .....

h) .....

i) "Independent production work", means any cinematographic and audiovisual work produced by an independent producer and which meets all the following requirements:

i) Independent producers shall hold the rights over the work produced with clear contractual definition of the duration and limits of broadcasting rights granted to broadcasters. In case of co-productions between independent producers and other players, including broadcasters, providers of on-demand audiovisual services or distributors, the classification of independent production work depends precisely on the ownership by independent producers;

ii) Works shall be produced with creative autonomy and developed with freedom, particularly as regards the choice of the studios, actors, means and distribution. In case of co-productions between independent producers and other players, including broadcasters, providers of on-demand audiovisual services or distributors, decisions concerning production shall be taken by common agreement in order to ensure the technical and artistic quality of the works;

j) “European work” means any cinematographic and audiovisual production that meets the requirements under Article 1(1)(n) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010;

l) .....

m) .....

n) .....

o) “Sponsorship” means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;

p) .....

q) “Programme” means a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule of a television service, a catalogue of an on-demand audiovisual service or a video-sharing platform service, including feature-length films, video clips, sports events, situation comedies (sitcom), documentaries, children's programmes and original drama;

r) .....

s) .....

t) .....

u) .....

v) .....

x) .....

z) “Audiovisual media service” means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union in the form of on-demand audiovisual service or television programme service, as defined respectively in points (s) and (t), and where the principle purpose of the service or a dissociable section thereof is devoted to providing to the general public:

i) Programmes in order to inform, entertain or educate, under the editorial responsibility of a provider of on-demand audiovisual services or broadcaster, as defined respectively in points (m) or (n); or both

ii) Audiovisual commercial communications;

aa) “Video-sharing platform service” means a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes or user-generated videos, or both, to the general public, and where:

i) The respective organisation is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing. Providers however do not have editorial responsibility for the programmes or user-generated videos, or both;

ii) The aim is to inform, entertain or educate; and

iii) The distribution is made by means of electronic communications networks as defined by Article 2(4) of the European Electronic Communications Code.

bb) “User-generated video” means a set of moving images with or without sound which:

i) Constitutes an individual item, irrespective of its length;

- ii) Is created by one user or more; and
- iii) Is uploaded to a video-sharing platform by that user or any other user;
- cc) “Editorial responsibility” means the exercise of effective control pursuant to Article 35(1)-(3) over the selection of programmes and their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual services;
- dd) “Editorial decision” means a decision which is taken on a regular basis for the purpose of exercising editorial responsibility and linked to the day-to-day operation of the audiovisual media service;
- ee) “Video-sharing platform provider” means the natural or legal person who provides a video-sharing platform service;
- ff) “Low turnover” means where significant profits are lower than EUR 200 000 per year as defined by Article 14a(6) of Law No. 55/2012 of 6 September;
- gg) “Low audience” means where a broadcaster or provider of on-demand audiovisual services has audience figures lower than 0,5 % when taking into consideration the total audiences of the various providers or active subscribers, as the case may be.

2 - .....

3 - The provision of programmes and user-generated videos is considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service.

4 - It is for ERC - Entidade Reguladora para a Comunicação Social (The Portuguese Regulatory Authority for the Media) to verify compliance with the requirements referred to in the above paragraph while taking into consideration the guidelines set by the European Commission.

5 - Where only a dissociable section of a service provided meets the definition of on-demand audiovisual media service, only that section shall be covered by this law.

### Article 3

(...)

1 - .....

a) .....

b) .....

c) Video-sharing platform services made available by video-sharing platform providers which are provided under the jurisdiction of the Portuguese State.

2 - The following shall be deemed to be under the jurisdiction of the Portuguese State:

a) Broadcasters and providers of on-demand audiovisual services meeting the criteria set out in Article 2 of the Audiovisual Media Services Directive.

b) Video-sharing platform providers meeting the criteria set out in Article 28a of the Audiovisual Media Services Directive.

3 - Point (a) of the above paragraph shall apply mutatis mutandis to distribution operators.

4 - Providers of on-demand audiovisual services, broadcasters and video-sharing platform providers shall report to ERC on facts which may be relevant for determining jurisdiction, as well as of any corresponding changes in accordance with the preceding paragraphs.

5 - The compliance with the obligation provided for in the above paragraph shall be carried out by means of:

- a) Registration, where the facts are subject to such act in accordance with the existing legal framework;
- b) Written communication sent by registered post or email to ERC's general email address, which is available on ERC's website, within 10 working days after the occurrence of the facts, in all other cases.

6 - ERC shall make available on its website up-to-date lists of providers of on-demand audiovisual services, broadcasters and video-sharing platform providers that are under the jurisdiction of the Portuguese State, and shall indicate the criteria of the Audiovisual Media Services Directive on which classification is based.

7 - The Government shall notify the European Commission of the address of ERC's website where up-to-date lists referred to in the above paragraph are made available.

8 - ERC shall forward the lists referred to in paragraph 6, as well as subsequent updates, to the member of the Government responsible for the media, who shall communicate such information to the European Commission.

9 - Where, in applying Articles 3, 4 and 28a of the Audiovisual Media Services Directive, Portugal or another Member State do not agree on certain options resulting from it, ERC shall inform the Government accordingly in order to bring the matter to the Commission's attention, pursuant to Article 2(5c) or Article 28a(7) of the Directive, as appropriate.

10 - The deliberations of the European Commission on the cases described in the preceding paragraph shall be examined by the Government, after hearing ERC, in order to weight the acceptance by the Portuguese State or otherwise lodge an appeal.

#### Article 4a

(...)

1 - Broadcasters, distributors, providers of on-demand audiovisual services and video-sharing platform providers shall make easily, directly and permanently accessible the following information:

- a) .....
- b) Name of each media service, as well as the name of the head or responsible person for each media service, where applicable;
- c) .....
- d) Contact details, including telephone numbers, postal and email address and website;
- e) Identification of the Member State having jurisdiction over that provider;
- f) Identification of the jurisdiction they are subject to, as well as the competent regulatory authorities or competent supervisory authorities, or both, as well as their contact details.

- 2 - .....
- 3 - .....
- 4 - .....
- 5 - .....

#### Article 6

(...)

1 - ERC shall encourage broadcasters, providers of on-demand audiovisual services and video-sharing platform providers to adopt co-regulation, self-regulation and cooperation mechanisms allowing achievement of the objectives referred to in the following paragraphs.

2 - The State, the public service concession holder and all other broadcasters and providers of on-demand audiovisual services shall cooperate with each other in the pursuit of the values of human dignity, specific rights of children and young people, rule of law, democratic society and social cohesion, promotion of the Portuguese language and culture, and the protection of children, young people and consumers, while taking into account the special needs of some categories of viewers.

3 - Mechanisms under paragraph 1 shall:

- a) Be such that they are broadly accepted by the main stakeholders;
- b) Clearly and unambiguously set out their objectives;
- c) Provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and
- d) Provide for effective enforcement including effective and proportionate sanctions.

4 - ERC shall promote, in particular, the adoption of co-regulation, self-regulation and cooperation mechanisms targeted, among other purposes, to provide information to the public in accessible formats, including Portuguese sign language, subtitling and audio description, and also aiming:

- a) To reduce the exposure of children and young people to audiovisual commercial communications regarding tobacco, alcoholic beverages or other stimulating substances;
- b) To reduce the exposure of children and young people to audiovisual commercial communications regarding foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended; and to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

#### Article 9

(...)

1 - .....

a) .....

b) .....

c) .....

d) .....

e) To contribute to ensuring the principles of tolerance, solidarity, non-discrimination and social cohesion;

f) To ensure a high level of consumer protection in all of its broadcasts.

2 - .....

#### Article 19

(...)

1 - It is for ERC to establish records of broadcasters and distributors and their television programme services, as well as records of providers of on-demand audiovisual services and video-sharing platform services providers with a view to publicise their ownership, structure, organization, and obligations, and also to protect their corporate designation.

2 - .....

3 - Broadcasters, distributors, providers of on-demand audiovisual services and video-sharing platform services providers are obliged to report to ERC on the information necessary for registration and which they shall regularly update, as defined by implementing decree.

4 - The information on the records, among other additionally required by means of a regulation to be approved by the Government, shall include:

- a) Identification and head office of the operator or provider;
- b) Name of programme services, on-demand audiovisual services and platforms provided;
- c) Identification of the directors responsible for the areas of programmes-or information, or both, of each service;
- d) Classification of each service as regards to coverage and content of programming;
- e) Date of issue and period of validity of licenses or authorizations, as well as their renewal date or any modifications to the approved project.

5 - ERC may audit, at any time, broadcasters, distributors, providers of on-demand audiovisual services and video-sharing platform services providers in order to supervise and control the information they provided.

#### Article 25

(...)

1 - .....

2 - Companies providing electronic communications networks used to pursuit television activity are obliged, by ANACOM (the Portuguese communications regulator) decision, to carry television programme services to be specified by ERC, in accordance with Article 24(3)(s) of ERC Statutes, approved by and annexed to Law No 53/2005 of 8 November.

3 - .....

4 - ANACOM may establish in a proportionate, transparent and non-discriminatory manner an appropriate remuneration as a compensation for 'must-carry' obligations.

5 - .....

6 - Providers of electronic communications networks carrying broadcasts of television programme services along with distributors shall provide network and distribution capacity for television programme services with local or regional coverage, as well as for the dissemination of educational or cultural activities, taking account of the characteristics of the composition of the services offered and both technical and market conditions, which are verified by ERC at all times in the context of authorization procedures underway, after hearing Autoridade da Concorrência (The Portuguese Competition Authority) or ANACOM whenever it deems necessary.

7 - Modifications concerning the composition of the provision of television programme services and on-demand audiovisual services supplied by distributors or modifications concerning their access conditions must take into account the obligations regarding diversification and pluralism, as well as the respect for consumer rights.

8 - Regardless of the previous paragraphs, consumers shall be notified of any change on the terms of the contract with 30 days in advance, expressly mentioning the option to terminate contract, free of any liabilities, whenever such modifications concern the composition or pricing of the provision of television programme services or on-demand audiovisual services supplied by distributors.

9 - No termination of contract will apply where:

- a) New channels are added and the channels offered as part of service under contract remain unchanged;
- b) Prices of services under contract decrease;
- c) Modification relates only to payments regarding independent services, such as changes in movie rental prices.

10 - The option to terminate contract provided for in paragraph 8 shall supersede any contractual terms and conditions having the aim or effect to hinder or prevent consumers to terminate contract.

11 - (Previous paragraph 10.)

12 - ERC may adopt decisions to ensure that the provisions of this Article are complied with, under the terms of its Statutes.

13 - IPTV providers capable to produce and transmit high definition signal may conclude contracts regarding the transmissions of their programmes with distributors, and shall report to ERC the information provided for in Article 19(4)(c) and (d).

#### Article 27

(...)

1 - Programming of audiovisual media services shall respect the human dignity, specific rights of children and young people, as well as fundamental rights, freedoms and guarantees.

2 - Programme elements of audiovisual media services shall not:

- a) Incite to violence or hatred towards a group of people or members of such groups based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, disability, age, sexual orientation or nationality;
- b) Contain public provocation to commit a terrorist offence as provided and punished by Law No. 52/2003 of 22 of August.

3 - Television broadcast of programmes which may manifestly, seriously and gravely impair the free development of the personality of children and young people or their image and privacy in free television programme services, notably programmes containing pornography or gratuitous violence, is not permitted. <sup>1</sup>

4 - .....

5 - Television broadcasts of any other programmes which may negatively affect the development of the personality of children and young people shall be permanently accompanied by an appropriate visual identification and may only take place between 24.00 and 6.00.

6 - On-demand audiovisual services programmes which may negatively affect the development of the personality of children and young people shall only be made available if permanently accompanied by an appropriate visual identification and providing technical features so that those assuming parental responsibilities may prevent children and young people from accessing such contents should they wish to.

7 - ERC shall encourage broadcasters and providers of on-demand audiovisual services to establish a common system for rating audiovisual media services programmes which should provide a set of signs identifying different age groups, depending on the content delivered, and which should respect

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<sup>1</sup> Text replaced by Declaration of Rectification No. 2a/2021



the rating system of the Comissão de Classificação de Espectáculos (The Portuguese Committee of Motion Picture Classification) throughout the broadcast of cinematographic works and videos.

8 - Broadcasts in pay television programme services shall remain the exception of the provisions of paragraphs 4 and 7.

9 - The provisions of the preceding paragraphs shall cover not only any other programme elements, including audiovisual commercial communications and announcements, self-promotional extracts or images, but also teletext services, electronic programme guides and interfaces for content access.

10 - Programme elements with the characteristics referred to in paragraphs 3 to 6 may be transmitted in any news programmes where, having journalist relevance, they are presented with due respect for the profession ethical standards and preceded by a warning regarding its nature.

11 - ERC shall define and publicise the criteria for assessing non-compliance with the provisions of paragraphs 3 to 6, which must be objective, appropriate, necessary and proportionate to the purposes pursued.

12 - Broadcasters and providers of on-demand audiovisual services may adopt codes of conduct that meet the requirements of this Article after hearing, in the case of broadcasters, their editorial boards within its responsibilities.

#### Article 28

##### Limits on freedom of reception and retransmission

1 - The provisions of paragraphs 1 to 3, 5 and 9 of the preceding Article shall apply to reception and retransmission of audiovisual media services.

2 - Whenever audiovisual media services are under the jurisdiction of another Member State, their reception and retransmission in Portuguese territory can be restricted only in the cases and in accordance with the procedures referred to in Article 86.

#### Article 30

(...)

1 - .....

2 - .....

3 - Messages referred to in the preceding paragraphs as well as emergency information, including public communications and announcements in natural disaster situations, which are made available to the public through audiovisual media services, shall be provided in a manner which is accessible to persons with special needs, notably by means of subtitling and audio description of visual contents that may be essential.

#### Article 34

(...)

1 - .....

2 - .....

a) .....

b) .....

c) .....

d) To ensure that their programmes and news programmes respect a culture of tolerance, non-discrimination and inclusion, in particular preventing the dissemination of hate speech in their broadcasts by adopting effective measures;

e) (Previous point (d))

f) (Previous point (e))

g) (Previous point (f))

h) (Previous point (g))

i) To respect the particular vulnerability of different types of audiences, which is measured against available indicators, notably regarding audiovisual commercial communications.

3 - In addition to the obligations set out in the points of the preceding paragraph, non-thematic television programme services with local or regional coverage shall:

a) Extend television programming to contents of regional or local nature;

b) Disseminate information with particular interest for a specific audience given their geographic scope;

c) Promote the characteristic values of regional or local cultures.

4 - The provisions of points a), b) and h) shall constitute obligations of thematic programme services, by reason of their nature, as well as points c), d), g) and i) of paragraph 2, irrespective of their nature.<sup>2</sup>

5 - (Repealed.)

#### Article 40

(...)

1 - Broadcasting time intended for television advertising and teleshopping, both within the period from 6.00 and 18.00 and from 18.00 and 24.00, may not exceed 10 % or 20 %, depending on whether they are respectively pay television programme services or free-to-air television programme services.

2 - The limits set in the preceding paragraph shall not apply to:

a) Teleshopping windows;

b) Announcements made by broadcasters in connection with its own programmes as well as ancillary products directly derived from those programmes, or concerning programmes and audiovisual media services of other entities belonging to the same broadcasting group;

c) Public service or public-interest purpose announcements and charity appeals broadcast free of charge;

d) Sponsorship announcements;

e) Product placements and production aids;

f) Neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.

3 - .....

4 - Continuous or massive broadcast of advertising or teleshopping rather than programmes on terms equivalent to a concession for commercial exploitation of such space to third parties is herewith prohibited.

<sup>2</sup> Text replaced by Declaration of Rectification No. 2a/2021

Article 41

(...)

- 1 - .....
- 2 - .....
- 3 - News and current affairs programmes shall not be sponsored.
- 4 - .....
- 5 - .....

Article 41a

(...)

- 1 - Product placement is prohibited only in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.
- 2 - (Repealed.)
- 3 - Product placement shall not influence content and organisation within a schedule, in the case of television broadcastings, or within a catalogue, in the case of on-demand audiovisual services, in such a way as to affect the responsibility and editorial independence of a broadcaster or provider of on-demand audiovisual services.
- 4 - .....
- 5 - .....
- 6 - .....
- 7 - .....
- 8 - The showing of any form of commercial messages which might impair the comprehensive, physical, mental or emotional development of children and young people during children's programmes, notably those concerning foods and beverages referred to in Article 20a of the Portuguese Advertising Code, is not allowed.
- 9 - .....
- 10 - .....
- 11 - .....

Article 45

(...)

- 1 - .....
- 2 - Catalogues of on-demand audiovisual services shall secure at least a 30 % share of European works and ensure prominence of those works. These catalogues should dedicate at least half of that share to creative works from European independent productions, originally made in Portuguese language, and produced in the last five years.
- 3 - Broadcasters and providers of on-demand audiovisual services are also subject to the contribution and investment provided for by the Law No. 55/2012 of 6 September, as revised in 2020.
- 4 - The previous paragraph shall apply to broadcasters, providers of on-demand audiovisual services and video-sharing platform providers within the jurisdiction of another Member State, but are targeted to audiences located in the Portuguese territory, as regards the revenues generated in Portugal.

5 - The previous paragraphs shall not apply to broadcasters, providers of on-demand audiovisual services and video-sharing platform providers with a low turnover or a low audience.

6 - The calculation of the share of European works referred to in paragraph 2 and the definition of low audience and low turnover referred to in Article 14a(4) of Law No. 55/2012 of 6 September, as amended by Law No. 74/2020 of 19 November, is made in accordance with the guidelines issued by the European Commission, pursuant to Article 13(7) of the Audiovisual Media Services Directive.

7 - ERC shall make available a report on the implementation of the obligations set out in the preceding paragraphs on its own website by 19 December 2021, and every two years thereafter, and the Portuguese Government shall notify the European Commission of the address where the report is available.

8 - ERC and ICA - Instituto do Cinema e do Audiovisual (The Portuguese Film and Audiovisual Institute) shall cooperate with each other in order to ensure the necessary data sharing for the supervision of compliance with the terms of this law.

Article 46

(...)

1 - Broadcasters providing television programme services with nationwide coverage shall ensure the dissemination of creative works from European independent productions, originally made in Portuguese language and produced in the last five years, in at least 10 % of their programming, excluding the time devoted to news programmes, sports events, games, advertising, teleshopping and teletext services.

2 - .....

3 - .....

Article 49

(...)

1 - (Previous text of Article.)

2 - Broadcasters and providers of on-demand audiovisual services under the jurisdiction of another Member State and which are targeted to audiences located in the Portuguese territory shall communicate a representative, as well as his or her identity and contact details, to ERC in order to comply with Article 45(3) and (4).

3 - Within the framework of cooperation between national regulators in the European Regulators Group for Audiovisual Media Services (ERGA), ERC shall communicate to the regulatory authority of the Member State with jurisdiction over the audiovisual media services referred to in the preceding paragraph of the infringement of the duty to provide information, which the entities referred to in the preceding paragraphs are subject to.

Article 51

(...)

1 - .....

2 - .....

a) .....

b) .....

c) .....

- d) .....
- e) .....
- f) To develop and implement an action plan with a view to promoting media literacy in accessible formats and tailored to people with special needs, including Portuguese sign language and subtitling, in partnership with relevant players in this field and comprising the production and dissemination of contents on this matter.
- g) .....
- h) .....
- i) .....
- j) .....
- l) .....
- m) .....
- n) .....
- o) .....

Article 55

(...)

- 1 - .....
- 2 - .....
- 3 - An advisory body representing public administration and civil society partners shall work alongside the television programme services with international coverage, convening in person or by means of videoconference, and which is inherently composed of the president of the Council of the Portuguese Communities and by the presidents of the Regional Councils of the Portuguese Communities in Africa, Asia and Oceania, North America, Central America, South America and Europe.

Article 75

(...)

- 1 - .....
  - a) Failure to comply with the provisions of Article 3(5)(b), Article 4a, Article 19(3), Article 27(6), Article 29, Article 40b(6), Article 41b(2), Article 42, Article 44(5), Articles 45, 46 and 58;
  - b) .....
  - c) .....
- 2 - .....
- 3 - .....

Article 76

(...)

- 1 - .....
  - a) Failure to comply with the provisions of Article 25(1), (6), (8) and (9), Article 27(4) and (10), Article 30(1), Article 32(5), Article 33(4) and (5), Articles 35 to 37, Articles 40 and 40a, Article 40b(1) to (5), Articles 41 and 41a, Article 41b(1) and (3), Article 41d(2) and (3), Article 43, Article 44(1) to (3), Article 49, Article 59(4), Article 61(1) and (4), Article 64(2) and (3), Article 69, Article 69b(1)(d) to (j), and Article 92(1);

- b) .....
- c) .....
- d) .....
- e) Non-performance of the obligations set forth in Article 30(3) and Article 34a(2) and (4) by a broadcaster or provider of on-demand audiovisual services;
- f) Violation of the integrity of programmes and audiovisual media services in accordance with Article 10a.

2 - .....

3 - .....

#### Article 77

(...)

1 - The following breaches are subject to a fine between EUR 75 000 and EUR 375 000:

- a) Failure to comply with the provisions of Article 4b(3) and (4), Article 7(2), Articles 11 and 12, Article 21(1), Article 25(2) and (3), Article 27(2), (3) and (5), Article 31, Article 32(2) and (6), Article 33(1) and (3), Article 34a(5), Article 39(1), Article 60(2), Article 69a, Article 69b(1)(a) and (c) as well as (2) and (3), and Article 69c;
- b) .....
- c) .....
- d) .....
- e) .....

2 - .....

3 - Depending on the seriousness of the breach, the imposition of the fines provided for in paragraph 1 result in a suspension for a period between 1 and 10 days of:

- a) The license or authorization for the television programme service or for the transmission of the programme in which the breach occurred;
- b) The provision of the entire catalogue or of the programme of on-demand audiovisual service.

4 - In the case of programme services with local coverage, the upper and lower limits of the breaches foreseen in paragraph 1 shall be reduced by one third.

5 - Negligent acts shall be punished and the upper and lower limits of the fines foreseen in the preceding paragraphs shall be reduced by half.

#### Article 86

##### Reception and retransmission of audiovisual media services

1 - Where Audiovisual Media Services Directive is applicable, the freedom of reception and retransmission within the Portuguese territory of audiovisual media services coming from another Member State shall be guaranteed.

2 - Freedoms referred to in the preceding paragraph may be precluded, limited and/or suspended only in the events and in accordance with Article 3 of the Audiovisual Media Services Directive.

3 - In accordance with Article 3 of the Audiovisual Media Services Directive, the acts and procedures entrusted to the Portuguese State shall be exercised by ERC, which shall inform the member of the government responsible for the media of all communications received and made, as well as of the actions taken without undue delay.

Article 86a

(...)

1 - ERC may take appropriate, necessary and proportional measures with a view to putting an end to infringements occurred in television programme services, as well as in on-demand audiovisual services provided by providers under the jurisdiction of another Member State in cases where it assesses that such services are wholly or mostly directed towards the Portuguese territory and that the providers have established themselves in another Member State in order to circumvent stricter rules, which would be applicable under the jurisdiction of the Portuguese State.

2 - In order to implement the provisions of the preceding paragraph, ERC shall observe the provisions of Article 4(2) to (7) of the Audiovisual Media Services Directive and take the necessary steps by the European Commission and the competent authorities of the Member States.

3 - In cases where ERC, in accordance with Article 4(2) of the Audiovisual Media Services Directive, considers that the Contact Committee should be invited to examine the case, it should call on the member of the Government responsible for the media to act accordingly.

4 - Pursuant to Article 4 of the Audiovisual Media Services Directive, ERC shall be responsible for cooperating with the competent authorities of other Member States, assessing the requests addressed to it, and shall take appropriate, necessary and proportional measures in cases where it recognises that a broadcaster or provider of on-demand audiovisual services under the jurisdiction of the Portuguese State provides television programme services or on-demand audiovisual media services which are wholly or mostly directed towards the territory of another Member State and has established itself in Portugal in order to circumvent more detailed or stricter rules of general public interest in force in such Member State.

5 - ERC shall inform the member of the Government responsible for the media of requests and communications received and provided without undue delay, in accordance with the previous paragraphs.

Article 86b

(...)

1 - ERC may prevent the provision of programmes in catalogues of on-demand media services contravening Article 27(1), (2) and (5) in a way which is commensurate with the objectives under its responsibility.

2 - (Repealed.)

3 - (Repealed.)

4 - (Repealed.)

5 - (Repealed.)

Article 93

(...)

1 - .....

2 - It is for ERC to conduct proceedings for administrative offences and for the Regulatory Board to impose the corresponding fines.

3 - .....»

### **Article 3**

#### **Amendment to Law No. 27/2007 of 30 July**

Articles 10a, 34a, 69a to f, 86c, 93a and 93b shall be added to Law No. 27/2007 of 30 July as follows:

#### «Article 10a

##### Integrity of programmes and audiovisual media services

1 - Overlays for commercial purposes as well as modifications, such as shortened forms, alterations, insertions before and after the broadcasts or interruptions during the transmission of audiovisual media services shall be prohibited, except in cases where it is permitted with explicit consent of the broadcaster or provider of on-demand audiovisual services and owner of the service concerned.

2 - The previous paragraph shall not apply to:

- a) Overlays solely initiated or authorised by the recipient of the service for private use, such as overlays resulting from services for individual communications and similar;
- b) Control elements of any user interface necessary for the operation of the device or programme navigation, such as volume bars, search functions, navigation menus or lists of channels or similar;
- c) Functions aimed to guarantee that persons with special needs have access to devices, services and contents;
- d) Warning information, general public interest information, subtitles and similar;
- e) Data compression techniques which reduce the size of a data file and other techniques to adapt a service to the distribution means, such as resolution and coding, without any modification of the content, notwithstanding the provisions of Article 3(3) of the Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union;
- f) Other situations of public interest or necessary in order to maximize users' experience when consuming services or contents, or both.

#### Article 34a

##### Accessibility

1 - Broadcasters and providers of on-demand audiovisual services are obliged to make their audiovisual media services continuously and gradually more accessible to persons with special needs.

2 - For the purposes of the preceding paragraph, and based on a multi-annual plan providing for a gradual increase of accessibility standards, ERC shall establish a set of obligations for broadcasters and providers of on-demand media services concerning the accessibility of audiovisual media services to persons with special needs, notably, and having regard to the nature of the service, the use of subtitles, Portuguese sign language interpreting, audio description, spoken Portuguese language or other techniques deemed appropriate, as well as the availability of easily understandable navigation menus.

3 - During the preparation of the plan referred to in the preceding paragraph, ERC shall:



- a) Hear the Instituto Nacional para a Reabilitação (the Portuguese Institute for Rehabilitation), other organisations representing disabled persons, broadcasters and providers of on-demand audiovisual services;
- b) Take into account technical and market conditions.

4 - Broadcasters and providers of on-demand audiovisual services shall provide ERC with all the necessary information so that it can assess compliance with the obligations laid down in paragraph 2 and monitor the progress of the degree of accessibility of audiovisual media services.

5 - Distributors shall ensure, by granting the necessary capacity and appropriate technical resources, that persons with special needs have an easy access to the functionalities made available by broadcasters and providers of on-demand audiovisual services in their services.

6 - ERC shall make available a report on the progress of accessibility of audiovisual media services in Portugal, as well as on the compliance with the plans referred to in paragraph 2 on its own website by 19 December 2022, and every three years thereafter, which shall be addressed to member of the Government responsible for the media and who will send it to the European Commission.

7 - In either case, be it on its website or by other appropriate means, while ensuring accessibility to persons with special needs, ERC shall:

- a) Make public the plans referred to in paragraph 2, the monitoring of compliance with these, the reports referred to in the preceding paragraph, and other information referent to accessibility of audiovisual media services;
- b) Receive information requests and examine complaints concerning accessibility of audiovisual media services, carrying out all adequate procedures applicable and in conjunction with customer ombudsman of service providers.

#### Article 69a

##### Human rights and protection of children and young people

Without prejudice to the provisions of Articles 12 to 16 of the Decree-Law No. 7/2004 of 7 January, video-sharing platform providers shall take appropriate measures to protect:

- a) The children and young people from programmes, user-generated videos and audiovisual commercial communications which might impair their comprehensive, physical, mental or emotional development;
- b) The general public from programmes, user-generated videos and audiovisual commercial communications that contain incitement to violence or hatred directed against a group or a member of a group on any of the grounds referred to in Article 27(2);
- c) The general public from programmes, user-generated videos and audiovisual commercial communications containing contents which dissemination constitutes a criminal offence, including public provocation to commit a terrorist offence as set out in Law No. 52/2003 of 22 August, offences concerning child pornography as set out in Law No. 103/2015 of 24 August, and in Article 176 of the Portuguese Penal Code, and offences concerning racism and xenophobia.

#### Article 69b

##### Consumer protection

1 - Video-sharing platform providers shall ensure that audiovisual commercial communications that are marketed, sold or arranged by them are readily recognisable as such and shall not:

- a) Constitute a breach of Article 27(1), (2), (5) and (6);
- b) Insert surreptitious or disguised advertising;
- c) Use subliminal techniques;
- d) Encourage behaviour prejudicial to health or safety;
- e) Encourage behaviour grossly prejudicial to the protection of the environment;
- f) Concern cigarettes and other tobacco products, as well as electronic cigarettes and refill containers;
- g) Be aimed specifically at children and young people when concerning alcoholic beverages;
- h) Encourage immoderate consumption of alcoholic beverages;
- i) Concern medicinal products and medical treatment available only on prescription;
- j) Are likely to cause physical, mental or moral detriment to children and young people, notably by:
  - i) Exhorting minors to buy or hire a product or service by exploiting their inexperience or credulity;
  - ii) Directly encouraging them to persuade their parents or others to purchase the goods or services being advertised;
  - iii) Exploiting the special trust children and young people place in parents, teachers or other persons; and
  - iv) Unreasonably showing children and young people in dangerous situations.

2 - Video-sharing platform providers shall take appropriate measures to ensure that audiovisual commercial communications transmitted in their services that are not marketed, sold or arranged by them comply with the preceding paragraph, and include in their services' terms and conditions the obligation for users to:

- a) Comply with current commercial communications rules, in particular the provisions of the preceding paragraph;
- b) Declare the inclusion of audiovisual commercial communications in the videos they generated.

3 - Video-sharing platform providers shall clearly inform the public where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under the preceding paragraph and Article 69c(b), or where providers have knowledge of that fact by any other means.

#### Article 69c

##### Mandatory functionalities

With a view to ensuring the purposes specified in Articles 69a and 69b, video-sharing platform providers, among other measures as may be appropriate, shall:

- a) Include the restrictions referred to in Article 69a and Article 69b(1) in the terms and conditions for the use of video-sharing platform services, and ensure its application;
- b) Have functionalities for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;
- c) Establish and operate transparent and user-friendly mechanisms for the public of a video-sharing platform to report, flag or classify the content referred to in Article 69a and 69b(1);

- d) Establish and operate systems through which they explain to the public of video-sharing platforms what effect has been given to the reporting and flagging referred to in the preceding point;
- e) Establish and operate age verification systems for users and public of video-sharing platforms with respect to content which may impair the physical, mental or moral development of children and young people, thus contributing to their protection;
- f) Provide for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of children and young people;
- g) Establish and operate transparent, easy-to-use and effective procedures for the handling and resolution of the public complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (c) to (f);
- h) Enforce effective media literacy measures and tools and raise users' awareness of those measures and tools.

#### Article 69d

##### Appropriateness of measures

ERC shall assess the appropriateness and effectiveness of the solutions taken by video-sharing platform providers with a view to implementing the provisions in the previous Article.

#### Article 69e

##### Co-regulation and self-regulation

Within the scope of the matters covered by Articles 69a and 69c, ERC shall encourage the establishment of co-regulation and self-regulation mechanisms on the terms and for the purposes set out in Article 6.

#### Article 69f

##### Settlement of disputes

1 - Video-sharing platform providers shall make alternative dispute resolution mechanisms available for users sharing videos they create in video-sharing platforms, as well as for their public, with respect for the fundamental rights of the parties involved.

2 - Regulations applicable shall be published on the platform's web-portal and the exercising of rights shall not require representation by a lawyer.

3 - The operating costs of the mechanisms established shall be financed entirely by the video-sharing platform provider and might only be charged to the counterparty where acting in bad faith.

4 - The video-sharing platform provider shall be exempt from the obligation laid down in paragraph 2 where such provider joins an arbitration centre for the purpose of complying with paragraph 1.

5 - The provisions of this Article shall not prevent recourse to judicial courts according to general provisions.

#### Article 86c

##### Cooperation with regulatory authorities of other Member States and the European Commission

1 - With a view to the implementation of the provisions set out in Articles 3, 86 and 86a, as well as the application of the provisions of Articles 2 and 4 of the Audiovisual Media Services Directive, ERC

shall cooperate with the competent authorities of other Member States and the European Commission, whether by means of direct correspondence with those or by empowering the member of the Government responsible for the media to take further steps regarding particular matters.

2 - When receiving information from a media service provider under the jurisdiction of the Portuguese State providing a service wholly or mostly directed at the audience of another Member State, ERC shall forward such information to the national regulatory authority or body of the targeted Member State.

3 - When receiving a request from a regulatory authority or body of a Member State whose territory is targeted by a media service provider under the jurisdiction of the Portuguese State concerning the activities of that provider, ERC shall do its utmost to address the request within two months, without prejudice to stricter time limits applicable.

Article 93a

Media literacy

By 30 December 2022 and every three years thereafter, ERC shall make available a report on the development of media literacy skills in Portugal on its own website, and which shall be addressed to the member of the Government responsible for the media, who will send it to the European Commission.

Article 93b

Protection of data concerning children and young children

Personal data of children and young people collected or otherwise generated by broadcasters, providers of on-demand audiovisual services or video-sharing platform providers shall not be processed for commercial purposes pursuant to Article 27(3), (5) and 6 and Article 69c(e) and (f), such as marketing, profiling and behaviourally targeted advertising, in accordance with the provisions of the General Data Protection Regulation in conjunction with the Law on the Protection of Children and Young People in Danger, notably with regard to obtaining possible consent from anyone exercising parental responsibilities.»

**Article 4**

**Systematic amendment to Law No. 27/2007 of 30 July**

Chapter VIA with the title “Video-sharing platforms” shall be added to Law No. 27/2007 of 30 July integrating Articles 69a to 69f.

**Article 5**

**Amendment to Law No. 55/2012 of 6 September**

Articles 2, 6, 8, 10a, 12, 13, 15 and 16 of Law No. 55/2012 of 6 September shall be replaced by the following:

«Article 2

(...)

1 - .....

a) .....

- b) .....
- c) .....
- d) .....
- e) .....
- f) .....
- g) .....
- h) .....
- i) .....
- j) .....

i) Independent producers shall hold the rights over the work produced with clear contractual definition of the duration and limits of broadcasting rights granted to broadcasters, and in the case of co-productions between independent producers and other players, such as broadcasters, providers of on-demand audiovisual services or distributors, the classification of independent production work depends precisely on the ownership by independent producers;

ii) .....

- k) .....
- l) .....
- m) .....
- n) .....
- o) .....
- p) .....
- q) .....
- r) .....

i) Direct or indirect shareholding does not exceed 12,5 % when held by a single broadcaster or provider of on-demand audiovisual services, or does not exceed 50% when held by multiple broadcasters or providers of on-demand audiovisual services;

ii) Total income up to 90 % in the latest business year or accumulated over the past three business years and achieved with a single broadcaster or provider of on-demand audiovisual services;

s) .....

t) "Low turnover" means when significant profits are lower than EUR 200 000 per year as defined by Article 14a(6);

u) "Low audience" means when a broadcaster or provider of on-demand audiovisual services has audience figures lower than 0,5 % when taking into consideration the total audiences of several operators or active subscribers, as the case may be;

2 - .....

3 - .....

Article 6

(...)

1 - .....

2 - .....

3 - In order to provide financial assistance to strengthen independent audiovisual production companies as well as to promote the broadcast and availability to the public of Portuguese audiovisual creative works, the Portuguese State shall promote a support programme for the audiovisual industry aimed at granting financial incentives for the writing, development, production, acquisition of broadcasting rights, transmission or provision of Portuguese audiovisual creative works from independent productions.

- 4 - .....
- 5 - .....
- 6 - .....
- 7 - .....
- 8 - .....
- 9 - .....

#### Article 8

(...)

1 - .....

2 - Only independent producers may be granted with financial support for development and production.

3 - Distributors and exhibitors distributing and exhibiting Portuguese, European and scarcely broadcasted cinematographic works may be granted with the support foreseen by the Decree-Law governing this Law.

4 - Professional and cultural associations in the industry as well as other entities, particularly in the areas of internationalisation, film culture or literacy, audience growth, training and promotion may be granted with the support foreseen by the Decree-Law governing this Law.

#### Article 9

(...)

1 - The Portuguese State shall provide support programmes and measures with adequate funding with a view to developing film art and the audiovisual sector, in accordance with the provisions set out in this law and in other legislation governing it, by means of:

- a) Collection of fees;
- b) Annual transfer to ICA of funds from the net profit for each financial year of ANACOM, which is to be returned to the Portuguese State and indexed to fees paid by pay-television service providers, under the terms set out this law.

2 - The Portuguese State shall also provide support to film art and the audiovisual sector by establishing investment obligations in the development, production, promotion and exhibition of European or Portuguese-speaking works and creative works from European independent productions originally made in Portuguese language, as well as in the maintenance and digitisation of cinemas, according to the provisions set out in this law and in other legislation governing it.

3 - The provisions of paragraph 1(c) shall not apply to broadcasters or providers of on-demand audiovisual services with low turnover or low audiences.

4 - The operating costs of ICA, in particular those regarding expenditure on staff, premises, purchases of goods and services, as well as the contributions paid by this Institute to sectoral international

organizations to which Portugal is party, shall be covered by appropriations transferred from the Portuguese State budget to ICA.

Article 10

(...)

1 - All commercial advertising exhibited in cinemas, audiovisual commercial communication broadcasted or transmitted by broadcasters or, by any means, transmitted by distributors, audiovisual commercial communication included in on-demand audiovisual services or in video-sharing platform services, as well as all advertising in electronic programme guides, regardless of the exhibition, broadcast or transmission platform, shall be subject to a fee, known as exhibition fee, which constitutes a charge on the advertiser and consists of 4 % on the price paid.

2 - .....

3 - The fee specified in the preceding paragraph shall be charged to and paid by each provider in the calendar year to which the fee relates and the correspondent annual value shall be calculated on the basis of the number of subscriptions in the preceding calendar year, which is obtained by applying the following formula:

$$NS = SNST/4$$

Where:

NS represents the number of subscriptions of each provider;

SNST represents the sum of the number of subscriptions per quarter of the calendar year preceding the calendar year in respect of which the fee is to apply, and which is calculated in accordance with the data reported to ANACOM in compliance with ANACOM regulation on the provision of statistical information valid on the date of the calculation.

4 - .....

5 - Providers of subscription-based on-demand audiovisual services shall be subject to payment of an annual fee representing 1% of the amount of their significant profits.

6 - The provisions referred to in paragraph 1 shall apply to all audiovisual commercial communications broadcasted or delivered in television services, on-demand audiovisual services, video-sharing platform services and programmes transmitted or made available by these, even if they are under the jurisdiction of another Member State, and are relative to profits generated in the Portuguese market.

Article 10a

(...)

1 - Following the settlement of the fee referred to in paragraphs 2 and 3 of the preceding Article, or in the absence of settlement, it is for ANACOM, at the request of ICA, to verify with the providers how the determination and settlement were carried out, including the number of subscriptions and internal control methods applied in such determination.

2 - .....

3 - .....

4 - .....

5 - Providers shall be held responsible for the costs incurred, up to a maximum amount of EUR 100 000, by ICA or ANACOM in carrying out audits whenever there are errors or omissions for which they

are held accountable, and without prejudice to the possibility of providers to also be held responsible for breaches.

6 - ICA shall promote compulsory settlement of any fee, compensatory interest or expenditure referred to in the previous paragraph where, following the conclusion of audits, errors or omissions are attributable to providers and result in any prejudice for ICA.

7 - In the event of compulsory settlement, ICA shall notify the providers, by means of registered letter with acknowledgement of receipt, to proceed with the settlement within 30 days, otherwise enforced recovery may ensue.

8 - The notification referred to in the previous paragraph shall include: the grounds for compulsory settlement, time limit for payment and a warning regarding the consequences of missing payments, as well as information as to remedies and time allowed for a reply to the notified act.

9 - .....

#### Article 12

(...)

1 - .....

2 - .....

3 - .....

4 - .....

- a) A default in the payment of the amounts established in the collection of fees provided for in Article 10 within the period referred to in Article 42 of the Decree-Law No. 25/2018 of 24 April, as well as of the amounts specified in Article 14b(8), Article 15(6), Article 16(6) and Article 17(6) by the end of January of the year following that to which they relate, shall be punished in accordance with Article 114(1) and (2) of the Portuguese General Regime for Tax Infringements, and if settlement is lower than the amounts previously provided for, it shall be punished as default in payment under the same terms;<sup>3</sup>
- b) (Repealed.)
- c) Non submission or submission after legal deadline or period fixed by ICA of declarations and documents or provision of information and clarifications regarding the determination and settlement of the amounts referred to in the preceding paragraph shall be punished in accordance with Article 117(1) of the Portuguese General Regime for Tax Infringements;
- d) Omissions or inaccuracies in declarations, documents, information or clarifications referred to in the previous point shall be punished in accordance with Article 119(1) and (2) of the Portuguese General Regime for Tax Infringements;
- e) Falsification, vitiation, concealment or destruction of documents and information that should be made available to ICA or that are relevant for the monitoring of compliance with this Section or other legislation governing it shall be punished in accordance with Article 118 of the Portuguese General Regime for Tax Infringements.

5 - Negligent acts shall be punished and the provisions of Articles 24 and 26 of the Portuguese General Regime for Tax Infringements shall apply.

6 - .....

<sup>3</sup> Text replaced by Declaration of Rectification No. 2a/2021



Article 13

(...)

- 1 - .....
- 2 - .....
- 3 - The proceeds generated from the settlement of the fee referred to in Article 10(5) constitute exclusive revenue of ICA.<sup>4</sup>
- 4 - The amounts transferred from ANACOM constitute exclusive revenue of ICA according to Article 12a.
- 5 - After deducing operating costs and commitments made in regard of partnerships or agreements concluded within its mission, ICA's available revenue shall be channelled to different programmes and measures while respecting strategic multi-annual plans and annual declarations of priorities in compliance with the following allocation:
  - a) 80 % aimed at supporting film art;
  - b) 20 % aimed at supporting audiovisual production.
- 6 - The percentage specified in point b) of the preceding paragraph shall increase by 5 % per calendar year and up to a limit of 30 % upon verification of the degree of financial implementation of tenders under the support programme for the audiovisual industry, and upon the number of viewers of the works supported, as foreseen by the Decree-Law governing this law.

Article 15

Investment by cinematographic distributors and video editors

- 1 - (Repealed.)
- 2 - Investment by cinematographic distributors and video editors is made in the production of European and Portuguese-speaking cinematographic and audiovisual works in the following forms:
  - a) (Repealed.)
  - b) Cinematographic and audiovisual production:
    - i) Acquisition of distribution rights during development phase with advance payment (minimum guaranteed);
    - ii) Co-production;
    - iii) Involvement in co-production with no co-ownership;
  - c) (Repealed.)
  - d) Acquisition of distribution rights over cinematographic works from European independent productions originally made in Portuguese language;
  - e) Restoring and mastering films of works supported or other creative works from European independent productions originally made in Portuguese language, provided that two copies are delivered to Cinemateca (The Portuguese film archive) in accordance with its technical standards.
- 3 - (Repealed.)
- 4 - .....
- 5 - .....

---

<sup>4</sup> Text replaced by Declaration of Rectification No. 2a/2021

6 - Distributors shall hand over to ICA, by January of the following year, all investment amounts which were not allocated to the intended purpose in a calendar year, and these shall constitute exclusive revenue of this body.

#### Article 16

(...)

1 - (Repealed.)

2 - Investment by providers of on-demand audiovisual services in cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language may take the following forms:

- a) Financing the writing and development of projects regarding cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language in any of the forms referred to in Article 14a(8)(a), but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties;
- b) Contributing financially to the production of cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language in any of the forms referred to in Article 14a(8)(a), but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties, by means of:
  - i) Acquisition of exploitation rights during development phase;
  - ii) Co-production;
  - iii) Involvement in co-production with no co-ownership;
- c) Acquiring exploitation rights over cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language, but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties;
- d) Restoring and mastering films of works supported or other European works in Portuguese language, provided that two copies are delivered to Cinemateca in accordance with its technical standards;
- e) Promoting cinematographic and European audiovisual works;
- f) Having in-house production or production from associated companies, acquiring commissioned works or investing in other European creative works.

3 - At least 30 % of the investment required shall be made in the forms referred to in paragraph 2(a) and (b).

4 - As for providers of subscription-based on-demand audiovisual services, the works referred to in paragraph 2(f) must originally be made in Portuguese language, but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties.

5 - Participation of providers of on-demand audiovisual services may also be ensured through the creation of an area dedicated to promoting European works and Portuguese-speaking works in their catalogues, under the terms to be specified in the Decree-Law governing this law.

6 - Broadcasters shall hand over to ICA, by January of the following year, all investment amounts which were not allocated to direct investment under paragraph 1 at the end of each consecutive two-year financial cycle, and these shall constitute exclusive revenue of this body.»

#### **Article 6**

##### **Amendment to Law No. 55/2012 of 6 September**

Articles 10b, 14a, 14b, 16a and 17a shall be added to Law No. 55/2012 of 6 September as follows:

#### «Article 10b

##### Compulsory settlement

1 - In the cases where there has been failure to comply with the obligation of reverse charge referred to both in Article 10(3) of this law and Article 41(3) of the Decree-Law No. 25/2018 of 24 April, it is up to ICA to initiate compulsory settlement procedures regarding the annual fee referred to in Article 10(2) with compensatory interest.

2 - Compulsory settlement is carried out on the basis of data reported to ANACOM for the purposes of indicators set out in ANACOM Regulation on reporting obligations of statistical information, and such data are to be communicated by ANACOM to ICA once they are available, regardless of whether or not has been requested by the latter.

3 - In the case of compulsory settlement, providers are notified by ICA, by means of registered letter with acknowledgement of receipt, to proceed with the settlement within 30 days, otherwise enforced recovery may ensue.

4 - The notification shall include: the grounds for compulsory settlement, the amount due, time limit for payment, consequences of missing payments, as well as information as to remedies and time allowed for a reply to the notified act.

#### Article 14a

##### Investment obligations

1 - Broadcasters, providers of on-demand audiovisual services, cinematographic distributors and video editors shall direct a share of their investment expenditure towards the development, production and promotion of European works and Portuguese speaking works, as well as works from independent productions, under the terms set out in this law and in other legislation governing it.

2 - Film exhibitors shall direct a share of their investment expenditure towards the maintenance and digitisation of cinemas, according to the provisions set out in this law and in other legislation governing it.

3 - Obligated entities may freely choose how to carry out their investment obligations with regard to works and activities covered by such investment, provided that the general conditions governing them are fulfilled, and which are laid down in this Subsection and in other legislation governing it.

4 - Paragraph 1 shall not apply to broadcasters, cinematographic distributors, video editors and providers of on-demand audiovisual services with a low turnover or a low audience in the Portuguese market, when:

- a) The annual profits generated in the Portuguese market are lower than EUR 200 000;
- b) The share in their market segment is lower than 1 %.

5 - The amount to be invested by private providers under paragraphs 1 and 2 shall be defined on the basis of their significant profits in accordance with the table in Annex to this law, of which it forms an

integral part, and as provided for by this law and by other legislation governing it, without prejudice to the application of the provisions of Article 45(6) of Law 27/2007 of 30 July, in which case the European Commission guidelines mentioned in such standard shall prevail.

6 - Significant profits are the ones resulting from the following services provided in the year prior to the fulfilling of the obligation:

- a) Audiovisual commercial communications in the case of broadcasters and providers of on-demand audiovisual services;
- b) Subscriptions in the case of pay television providers;
- c) Distribution of cinematographic works in the case of distributors of cinematographic works;
- d) Distribution of videos, excluding video rentals or exchanges in the case of video editors;
- e) Subscriptions or specific transactions of on-demand audiovisual services in the case of providers delivering such services.

7 - The obligations provided for in this Article shall apply to broadcasters and providers of on-demand audiovisual services under the jurisdiction of another Member State targeting audiences or aiming commercial offerings at audiences in the Portuguese territory, and therefore only the obligations regarding profits generated in the Portuguese market will apply.

8 - In the case of broadcasters and providers of on-demand audiovisual services, the obligations provided for in this Article shall:

- a) Apply only to those including in the programming of any of their programme services or catalogues: feature-length and short films, television films, cinematographic creation documentaries or creative documentaries made for television and original drama, including fiction, documentary and animation types;
- b) Not apply to those providers that exclusively include works of pornographic nature in their programme services or catalogues.

9 - Where generic television programme services or where the type of content referred to in point a) of the preceding paragraph amount less than 50 % of their programming, which is measured on the basis of the number of hours, investment amounts provided for in the Annex to this law shall be reduced by 50 %.

10 - Investment obligations provided for in paragraph 1 applicable to the public service broadcaster represent 10 % of annual profits from audiovisual contributions, which was established by Law 30/2003 of 22 August, and is excluded from the revenue devoted entirely to radio service.

11 - The Decree-law governing this law shall specify procedures and mechanisms with a view to further diversifying partners and avoiding investment concentration, as well as to ensuring the enforcement of rules relating to copyright, which may contribute to the sustainability and development of independent creative and business activities.

#### Article 14b

##### Investment by broadcasters

1 - Investment provided for by the previous Article made by broadcasters may take the following forms:

- a) Financing the writing and development of projects regarding cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language in any of the forms referred to in paragraph 8(a) of the preceding

Article, but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties;

- b) Contributing financially to the production of cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language in any of the forms referred to in paragraph 8(a) of the preceding Article, but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties, by means of:
  - i) Acquisition of broadcasting rights during development phase (prepurchase);
  - ii) Co-production;
  - iii) Involvement in co-production with no co-ownership;
- c) Acquiring rights to broadcast, transmit and make available cinematographic and audiovisual creative works from European independent productions originally made in Portuguese language, but with no Portuguese language requirement applying in the case of co-productions involving Portuguese participation under applicable treaties;
- d) Promoting European cinematographic and audiovisual works;
- e) Having in-house production or production from associated companies, acquiring commissioned works or investing in other creative audiovisual works.

2 - At least 30 % of the investment required shall be made in the forms referred to in paragraph 1(a) and (b).

3 - The compliance with the provisions of this Article shall be measured in two consecutive financial years and the amount invested beyond the compulsory minimum in a cycle may be carried over to the following cycle in the form of credit in the fulfilling of the obligation.

4 - The compliance with investment obligations includes the transmission of works by broadcasters in any of their programme services.

5 - The compliance with investment obligations in the forms laid down by paragraph 1(b)(i)-(iii) referent to a creative work from European independent production made originally in Portuguese language, and representing 50 % or more of the total cost of such work, without jeopardising the status of independent production work, grants the right to account for the allocated amount by a 1.5 coefficient.

6 - The compliance with investment obligations in the forms laid down by paragraph 1(b)(i)-(iii) referent to a creative work from European independent production made originally in Portuguese language, which consists of a first work from the respective authors, and representing 50 % or more of the total cost of such work, without jeopardising the status of independent production work, grants the right to account for the allocated amount by a 1.5 coefficient.

7 - It is up to ICA in cooperation with ERC to verify the compliance with direct investment obligations set out in the preceding paragraphs, and broadcasters shall provide quarterly reports containing the following: title of the work, identification of the independent producer and other copyright holders and related rights to the work, hour of broadcasting and the amount spent on the forms provided for in paragraph 1.

8 - Broadcasters shall hand over to ICA, by January of the following year, all financing amounts which were not allocated to direct investment under paragraph 1 at the end of each consecutive two-year financial cycle in each calendar year, and these shall constitute exclusive revenue of this body.

Article 16a

Significant profits

1 - Where it is not possible to ascertain significant profits of a provider of subscription-based on-demand audiovisual services for the purposes of applying the fee provided for in Article 10(5), the figure for the annual value of such fee shall be assumed to be EUR 1 000 000.<sup>5</sup>

2 - Where it is not possible to ascertain significant profits of a provider for the purposes of investment obligations provided for in Articles 14a to 16, the figure for the annual investment shall be set to EUR 4 000 000.

3 - For the purpose of calculating the figures referred to in the preceding paragraphs, providers shall submit to ICA the accounting documents certifying significant profits in accordance with the terms and conditions to be specified in the Decree-Law governing this law.

4 - For the purposes set forth in paragraphs 1 and 2, it is considered that significant profits of providers cannot be calculated where:

- a) Profits need not to be declared in Portugal but rather in other Member States and where elements provided in those countries do not contain the geographical origin of profits, thus not allowing to determine the proportion of the profits generated in Portugal;
- b) Legal documents enabling the calculation of significant profits are not provided.

Article 17a

Supervision, settlement, payment and enforced recovery

1 - Without prejudice to this law or additional act, the provisions of both Portuguese general tax law and the Portuguese Code of Tax Procedure and Proceedings shall apply on a supplementary basis to the settlement of the amounts provided for in Articles 14b(8), 15(6), 16(6) and 17(6).<sup>6</sup>

2 - The amounts referred to in the previous paragraph shall be settled by the entities responsible for such settlement in accordance with this law, and the payment shall be made by bank transfer and against receipt, which is made available on ICA's website.

3 - In the absence of settlement or following the settlement of the amounts referred to in the preceding paragraphs, it is up to ICA together with ERC and IGAC - Inspeção -Geral das Atividades Culturais (the Portuguese Inspectorate General for Cultural Activities) to conduct audits in order to determine the amounts due or to ascertain the veracity of data used for determination and settlement of such amounts, including the sums assigned to investment obligations.

4 - The provisions in Article 10a(2), (3) and (4) shall apply mutatis mutandis to audits referred to in the preceding paragraph.

5 - ICA shall promote compulsory settlement of amounts due, compensatory interest or expenditure in conducting the audits referred to in the previous paragraphs and where, following the conclusion of such audits, errors or omissions are attributable to providers, distributors or exhibitors resulting in any prejudice for ICA.

6 - In case of compulsory settlement specified in the preceding paragraph, the provisions of Article 10a(7), (8) and (9) shall apply mutatis mutandis.

7 - The provisions in Article 11a shall apply mutatis mutandis to enforced recovery of the amounts foreseen in Articles 14b(7), 15(6), 16(4) and 17(6).»

<sup>5</sup> Text replaced by Declaration of Rectification No. 2a/2021

<sup>6</sup> Text replaced by Declaration of Rectification No. 2a/2021

### **Article 7**

#### **Addition of Annex to Law No. 55/2012 of 6 September**

An Annex to Law No. 55/2012 of 6 September shall be added, which shall form an integral part thereof, and published as an annex to this law.

### **Article 8**

#### **Systematic amendment to Law No. 55/2012 of 6 September**

1 - In Law No. 55/2012 of 6 September, the following systemic changes shall be made:

a) Subsection 1, which is titled “Fees and revenues of competent national bodies” integrating Articles 10 to 13.

b) Subsection 2, which is titled “Integrated investment” integrating Articles 14a to 17.

2 - References to ICP — Autoridade Nacional de Comunicações (ICP -ANACOM) in Law No. 55/2012 of 6 September shall be construed as references to Autoridade Nacional de Comunicações or ANACOM.

### **Article 9**

#### **Final and transitional provisions**

1 - The remuneration referred to in Article 25(2) of Law No. 27/2007 of 30 July shall be determined in accordance with Article 43(1) and (2) of Law 5/2004 of 10 February until the entry into force of the law transposing European Electronic Communications Code into Portuguese law.<sup>7</sup>

2 - Without prejudice to a possible review by ANACOM of its regulatory power, the fee provided for in Article 10(3) shall be calculated in accordance with Indicator II.7 of Annex 2 to the Regulation No. 255/2017 of ANACOM, published in the Portuguese Official Gazette, Series 2, No. 94 of 16 May 2017.

### **Article 10**

#### **Repealing rules**

1 - The following shall be hereby repealed:

a) Article 34(5), Article 41a(2), Article 77a and Article 86b(2)-(5) of Law No. 27/2007 of 30 July;

b) Article 12(4)(b), Article 14, Article 15(1), (2)(a)-(c) and (3), Article 16(1) and Articles 28, 29 and 30 of Law No. 55/2012 of 6 September.

### **Article 11**

#### **Regulation**

The Portuguese Government shall regulate this law within 60 days of its entry into force.

### **Article 12**

#### **Evaluation**

The Portuguese Government shall promote the evaluation of implementation of this law two years after its entry into force.

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<sup>7</sup> Text replaced by Declaration of Rectification No. 2a/2021

**Article 13**  
**Entry into force**

This law shall enter into force 90 days after its publication, except as to the changes introduced in Article 10(3) of Law 55/2012 of 6 September, which shall apply from 1 January 2020.

Adopted on 23 October 2020.

The President of the Assembly of the Republic, *Eduardo Ferro Rodrigues*.

Promulgated on 16 November 2020.

For publication.

The President of the Republic, *Marcelo Rebelo de Sousa*.

Countersigned on 16 November 2020.

The Prime Minister, *António Luís Santos da Costa*.

ANNEX

(Annex to Law 55/2012 of 6 September referred to in Article 7)

ANNEX

**Table on the amount of investment required under Articles 14 to 16 and according to type of service and level of profits**

Levels of significant profits	Type of service			
	Television	Film distribution	Video editing	On-demand audiovisual services
< EUR 199 999	Exempt.	Exempt.	Exempt.	Exempt.
EUR 200 000 – EUR 1 999 999	0,5 % of significant profits or EUR 0.50 per subscriber or fixed amount of EUR 10 000.	0,5 % of significant profits.	0,5 % of significant profits.	0,5 % of significant profits or EUR 0.50 per subscriber or fixed amount of EUR 10 000.
EUR 2 000 000 – EUR 9 999 999	1 % of significant profits or EUR 1 per subscriber or fixed amount of EUR 100 000.	1 % of significant profits.	1 % of significant profits.	1 % of significant profits or EUR 1 per subscriber or fixed amount of EUR 100 000.
EUR 10 000 000 – EUR 24 999 999	2 % of significant profits or EUR 2 per subscriber or fixed amount of EUR 500 000.	2 % of significant profits.	2 % of significant profits.	2 % of significant profits or EUR 2 per subscriber or fixed amount of EUR 500 000.
EUR 25 000 000 – EUR 49 999 999	3 % of significant profits or EUR 3 per subscriber or fixed amount of EUR 1 500 000.	3 % of significant profits.	3 % of significant profits.	3 % of significant profits or EUR 3 per subscriber or fixed amount of EUR 1 500 000.
> EUR 50 000 000	4 % of significant profits or EUR 4 per subscriber or fixed amount of EUR 4 000 000.	4 % of significant profits.	4 % of significant profits.	4 % of significant profits or EUR 4 per subscriber or fixed amount of EUR 4 000 000.