

# Law no.54/2010 of 24 December

## Approves the Radio Law, repealing Law no.4/2001 of 23 February

Under the terms of article 161, paragraph c) of the constitution, parliament decrees as follows:

### CHAPTER I General provisions

#### Article 1 Purpose

This law sets out to regulate access to radio activity in Portugal and the exercising thereof.

#### Article 2 Definitions

1 - For the purposes of the present act the following meanings are assumed:

*a)* «Radio activity» the activity carried out by corporate bodies which consists of the organisation and supply, on a continuous basis, of radio programme services with a view to their broadcasting to the general public;

*b)* «Control» means the relationship existing between an individual or corporate body and a company when - regardless of whether the address or registered offices are situated in Portugal or abroad - the former may directly or indirectly exert a dominant influence over the latter. There is also assumed to be control, in any case, when an individual or corporate body:

*i)* Holds a majority interest in the share capital or the majority of voting rights;

*ii)* Can exercise the majority of the voting rights under the terms of the shareholder agreement; or

*iii)* May appoint or dismiss the majority of the holders of the administration or supervisory bodies;

*c)* «Chain broadcasting»: the simultaneous or deferred transmission - total or partial - of the programming of the same programme service by more than one operator licensed or authorised for the exercising of radio activity;

*d)* «Licensing»: the essential title for carrying out radio activity, conferred by a legislative act, license, permit or concession;

*e)* «Radio operator»: the entity responsible for the organisation and supply, on a continuous basis, of radio programme services legally authorised to carry out radio activity;

*f)* «Sponsorship»: the contribution made by individuals or corporate bodies, public or private, which are not radio operators or radio work producers, for the financing of radio programme services, or its programmes, with a view to promoting their name, brand, image, activities or products;

- g)* «Own programming»: that which is made up of elements selected, organised and disseminated autonomously by the radio operator responsible for the respective programme service, with relevance to the audience of the attendant geographic coverage area, namely in the social, economic, scientific and cultural fields;
- h)* «Radio»: the unilateral broadcasting of sound communications, through an electronic communications' network, intended for simultaneous reception by the general public;
- i)* «Programme service»: the set of programming elements, sequential and unitary, supplied by a radio operator.

2 — The provisions of paragraph *h)* of the previous number exclude:

- a)* The periodic broadcasting of sound communications through the technical devices installed in the vicinity of the sites where events occur to which they relate and being aimed at the public concentrated there;
- b)* The broadcasting of sound communications inside buildings and other limited spaces provided that they do not involve the use of the terrestrial Hertzian spectrum intended for radio broadcasting under the terms foreseen in the National Table of Frequency Allocations.

3 — The provisions of no.1 paragraph *g)* exclude advertising or merely repetitive broadcasts.

### Article 3

#### **Transparency of ownership and management**

1 — The shares representing the share capital of the radio operators which take the form of a limited company must be registered.

2 — The list of holders and owners of stakes in the share capital of radio operators, the composition of their administration and management bodies and the identification of the person responsible for the orientation and supervision of the content of their broadcasts are made public at the website of the respective media and they must be updated within the seven days subsequent to the occurrence of the attendant fact which gave rise thereunto whenever:

- a)* A holder or owner attains or exceeds 5%, 10%, 20%, 30%, 40% or 50% of the share capital or the voting rights;
- b)* A holder or owner reduces their stake to an amount lower than each of the percentages indicated in the previous paragraph above;
- c)* There is any alteration in the control of the radio operator;
- d)* There is an alteration to the composition of the administration and management bodies or to the structure of responsibility for the orientation and supervision of the contents of the broadcasts.

3 — The list referred to in the previous number above must contain, with the necessary updates:

- a) The itemisation of the percentage stakes in share capital of the respective holders and owners;
- b) The identification of the whole chain of entities to which a stake of at least 5% in the operators in question must be attributed; and
- c) The indication of the stakes of those holders and owners in other media.

4 — In the absence of any website, the information and updates referred to in nos. 2 and 3 are communicated, in applicable fashion, by the radio operator responsible to the Entidade Reguladora para a Comunicação Social (ERC) which provides them at its publicly accessible website.

5 — The provisions of nos. 2, 3 and 4 apply, with the necessary adaptations, to corporate bodies not taking the form of a company which carry out radio activity, namely associations, cooperatives or foundations.

#### Article 4

#### **Competition, non-concentration and pluralism**

1 — Radio operators are subject to the general regime on the defence and promotion of competition.

2 — Concentration operations between radio operators subject to the intervention of the competition regulatory authority are submitted to the prior opinion of the ERC which is binding when it is based on the existence of any risk to free expression and the comparison of various schools of thought.

3 — No individual or corporate body may directly or indirectly hold, namely through a relationship of control, a number of local radio programme service licenses in excess of 10% of the total number of licenses awarded in Portugal.

4 — No individual or corporate body in the private sector may directly or indirectly hold, namely through a relationship of control, a number of national programme services in modulated frequency equal to or greater than 50% of the programme services authorised for the same coverage area and for the same frequency range.

5 — No individual or corporate body may hold, in the same district, in the same metropolitan area, in the same municipality or, in the autonomous regions, on the same island, directly or indirectly, namely through a relationship of control, a number of local radio programme services' licenses in excess of 50% of the programme services with the same scope authorised in each of the aforementioned territorial areas.

6 — Any alteration to the control of the operators that carry out radio activity under a license may only occur three years after the original awarding of the license, two years after the modification of the approved project or one year after the last renewal and it is subject to ERC authorisation.

7 — The ERC shall reach a decision about the authorisation request referred to in the previous number above, after hearing the parties concerned, within 30 business days after verifying and weighing up the initial conditions which are decisive for the awarding of the license and the interests of the potential audience for the programme services supplied, ensuring the safeguarding of the conditions which allowed a decision to be made about the original project or about any subsequent alterations.

8 — The provisions of the previous numbers apply, with the necessary adaptations, to corporate bodies not taking the form of a company, namely associations, cooperatives

or foundations which carry out radio activity and the ERC must, if the assumptions have been met to carry out the operation, promote the respective alterations to the license for carrying out the activity.

9 — Under the terms foreseen for the alteration to the control of the operators, the assignment of local programme services and of the respective licenses or authorisations, when this can be proven to be useful for safeguarding the licensed or authorised project and provided that the universality of the assets, rights and obligations has been transferred, including those of an employment nature, exclusively assigned to the programme services in question.

10 — Notwithstanding the competences of the national communications regulation authority enshrined in the regime applicable to electronic communications' services and networks and to radio communications, the assignment referred to in the previous number above is subject to ERC authorisation which shall make a decision within 60 days after the request.

#### Article 5

##### **Public service**

The state ensures the existence and operation of a public radio service on a concession basis under the terms of chapter IV.

#### Article 6

##### **Cooperation principle**

1 — The State, the public service concessionaire and the other radio operators must cooperate with each other to pursue the values of the dignity of the human person, of the democratic state, of a democratic society and national cohesion and the promotion of the Portuguese language and culture.

2 — The ERC promotes and incentivises the adoption of co-regulation, self-regulation and cooperation mechanisms between the various radio operators which allow the achievement of the objectives referred to in the previous number.

#### Article 7

##### **Coverage areas**

1 — Programme services may have international, national, regional or local coverage depending on whether they are intended to encompass, respectively:

- a) Predominantly, the territory of other countries;
- b) Portugal as a whole;
- c) A district or set of districts or a metropolitan area in mainland Portugal or a set of islands, in the autonomous regions;
- d) A municipality or a set of adjoining municipalities and any neighbouring areas, in accordance with the technical requirements for the necessary coverage thereof in mainland Portugal or on an island with several municipalities in the autonomous regions.

2 — The geographic area assigned to each national programme service must be covered by the same recommended programme and signal, unless authorised

otherwise, to be granted by way of a deliberation by the ERC, and notwithstanding the use of complementary coverage media, when duly authorised.

3 — The decision referred to in the previous number sets the time limit for the discontinuation of broadcasting for a maximum of two hours per day which may be extended, under the terms foreseen therein, under exceptional, duly well-founded circumstances up to a maximum of six hours per day.

4 — The classification of programme services with regard to the coverage area is carried out by the ERC in the act of licensing or authorisation, without prejudice, with regard to the latter, to its alteration under the terms foreseen in article 26.

#### Article 8

##### **Classification of types of radiophonic programme services**

1 — The programme services may be mainstream or thematic, in which case they must be classified in accordance with the dominant characteristic of the programming adopted or with the segment of the public at which they are preferably aimed.

2 — Programme services are deemed to be mainstream when they are endowed with a diversified programming model, including a news component and aimed at the general public.

3 — Programme services are deemed to be thematic when they are endowed with a programming model predominantly focused on specific radio types or matters such as music, news or others or preferably aimed at certain segments of the public.

4 — The classification of programme services with regard to programming content is carried out by the ERC in the act of licensing or authorisation, notwithstanding its subsequent alteration, at the request of the parties concerned, under the terms foreseen in article 26.

#### Article 9

##### **Academic programme services**

1 — The frequencies reserved in the National Table of Frequency Allocations for the carrying out of local radio activity may be aimed at the provision of programme services geared towards higher education populations by way of a joint order by the Government members responsible for the fields of the media, communications and higher education.

2 — The order referred to in the previous number puts out the public tender which can only receive applications from entities in which shareholdings are held by higher education institutions and associations of students from the geographic area pertaining to the frequencies to be assigned, having to contain the respective regulation.

3 — In the event of the selection of projects submitted to the same tender, the ERC takes into account - for the purposes of ranking the applications - the diversity and creativity of the project, the promotion of experimentation and the formation of new values, the capacity to contribute to the discussion of ideas and knowledge, as well as that of fostering an approximation between the academic life and the local population and also the institutional cooperation achieved by the entities which are signatory to the project.

4 — The programmes services referred to in this article cannot contain any form of commercial advertising or sponsorship, though they may use institutional advertising pertaining to entities which pursue purposes in the fields of education, research and higher education.

5 — Programme services licensed under the terms of this article are not covered by article 38 and they may only broadcast their own programming and as regards everything else the provisions of the present act for local thematic programme services apply.

#### Article 10

##### **Programme services' association**

1 — Thematic programme services which comply with the same type and the same specific model may, when they broadcast from different districts and boroughs which are not neighbouring, associate with each other, for the shared production and simultaneous broadcasting of programming.

2 — The chain broadcasting foreseen in the preceding number cannot exceed six programme services in mainland Portugal, to which two may be added in the autonomous regions.

3 — The programme services' association determined under the terms of this article is identified when broadcast under the same designation.

#### Article 11

##### **Programme services' partnership**

1 — The local or regional programme services may chain broadcast the programming of other programme services of the same type.

2 — The local programme services which form part of a chain under the terms of the previous number must broadcast a minimum of eight hours of their own programming which cannot be broken down into more than six broadcast blocks between 7 a.m. and 12 midnight and in accordance with the provisions of article 32, no.3

3 — The partnerships foreseen in this article are subject to the provisions of no.3 of the previous article, notwithstanding compliance with the provisions of article 32, no.2, paragraph g), during the own programming time.

#### Article 12

##### **Radio activity goals**

The following constitute radio activity goals in accordance with the nature, theme and coverage area of the programme services made available:

- a) To contribute to the information, education and entertainment of the public;
- b) To promote the exercising of the right to inform and to be informed, with accuracy and independence, without any impediments nor discriminations;
- c) To promote citizenship and democratic participation and to respect political, social and cultural pluralism;
- d) To disseminate and promote the Portuguese language and culture and the values that express national identity;

e) To contribute to the production and dissemination of programming, including news programming, aimed at the audience of the respective coverage area.

### Article 13 **Public incentives**

1 — With a view to ensuring the possibility of expression and comparison of the various schools of thought, the state shall organise an incentives' system for local radio activity, determined in a specific law.

2 — The granting of incentives and supports foreseen in the previous number respects, subject to nullity, the principles of advertising, objectivity, non-discrimination and proportionality.

### Article 14 **Technical regulations**

1 — The technical conditions for carrying out radio activity and the charges to be paid for the awarding of rights or for the use of the resources required for transmission are defined under the terms foreseen in the applicable legislation on electronic communications.

2 — The legislation referred to in the previous number stipulates the terms under which, if there is a need to improve the technical quality of the coverage of the licensed programme services, it is possible to request the use of relay stations and the location of the respective broadcasting station outside the municipalities for which they have a license.

## CHAPTER II **Access to activity**

### Article 15 **Operators' requirements**

1 — Radio activity which consists of the organisation of mainstream or news thematic programme services on an international, national or regional basis, may only be carried out, under the terms of this law, by corporate bodies whose main purpose is this exercising.

2 — Radio activity which consists of the organisation of mainstream or news thematic programme services on a local basis, may only be carried out, under the terms of this law, by corporate bodies whose main purpose is the exercising of media activities.

3 — The provisions of the preceding numbers do not apply to associations or foundations which pursue purposes of a humanitarian, educational, cultural, scientific or student nature when the respective programme services make a significant contribution to enhancing those activities.

4 — Radio activity in kilometric waves (long waves) and decametric waves (short waves) may only be exercised by the concessionaire of the public radio service,

notwithstanding its pursuit by other operators legally qualified to this end as at the date of the coming into force of the present act.

#### Article 16 **Restrictions**

1 — Radio activity cannot be exercised or financed, directly or indirectly, by political associations or parties, trade union, employer or professional organisations, public professional associations, unless the activity is exclusively carried out online and consists of the organisation of programme services of a doctrinal, institutional or scientific nature.

2 — Notwithstanding the provisions of article 5, radio activity cannot be exercised by the state, by the autonomous regions, by local governments or their associations, directly or through public institutes, regional or state-owned companies, municipal, intermunicipal or metropolitan companies, unless the activity is exclusively carried out online and consists of the organisation of programme services of an institutional or scientific nature.

#### Article 17 **Forms of access**

1 — Access to radio activity is subject to licensing, through public tender or authorisation, depending on whether the programme services to be supplied use, or not, the Hertzian terrestrial, spectrum aimed at radio broadcasting under the terms foreseen in the National Table of Frequency Allocations, safeguarding those rights already acquired by duly licensed operators.

2 — Licenses or permits for broadcasting are individualised in accordance with the number of programme services to be supplied by each operator.

3 — Radio activity which consists of the broadcasting of programme services online does not require prior qualification and is solely subject to registration under the terms foreseen in article 24.

4 — The broadcasting of new programme services by the public service concessionaire is authorised by way of an order by the government member responsible for the media area or, when it uses the Hertzian terrestrial spectrum intended for radio broadcasting under the terms foreseen in the National Table of Frequency Allocations, by way of a joint order by the former and by the government member responsible for the communications' area.

#### Article 18 **Frequency planning**

The planning of the radio spectrum for the exercising of radio activity is incumbent upon the national regulatory authority for communications, having heard the ERC.



Article 19  
**Public tender**

1 — The public licensing tender for the carrying out of radio activity and for the awarding of the attendant frequency usage rights is put out by way of a joint order by the government members responsible for the fields of the media and communications which must contain the respective purpose and regulation.

2 — The regulation identifies the terms of admission of applications, as well as the documentation that must accompany them, in order to allow the verification of the compliance of the candidates and the projects with the legal and regulatory requirements, namely:

- a) With the operators' requirements and restrictions on the exercising of activity;
- b) With the rules on pluralism and non-concentration in the media;
- c) With the conformity of projects with the object of the tender;
- d) With the economic and financial feasibility of the projects;
- e) With the coverage obligations and the respective staging;
- f) With the sufficiency of the human and technical resources to be assigned;
- g) That the tax and social security situation is up-to-date and the presentation of the respective certificate may be dispensed with under the terms of Decree Law no.114/2007 of 19 April.

3 — For the purposes of ranking the candidatures to tender and in the case of mainstream radio programme services, the following criteria are taken into account:

- a) The contribution of each of the projects to qualify the radio offer in the field it is intended to cover, ascertained in line with the guarantees of the defence of pluralism, non-concentration and independence from economic and political power, the prominence afforded to information and the safeguarding of the constitutionally recognised rights for journalists;
- b) The contribution of each of the projects to the diversification of radio offer in the field it is intended to cover, ascertained in line with its originality, the enhancement of innovation and creativity;
- c) The contribution of each of the projects to the dissemination and promotion of Portuguese culture, language and music;
- d) The investment in training and professional qualification;
- e) The quality and technical efficiency of the project, ascertained in line with the proposed coverage index, the speed of implementation and the network staging, its reliability and the form of interconnection of the broadcasting stations.

4 — For the purposes of ranking the tender applicants and in the case of thematic programme services, the criteria referred to in the preceding number are taken into account, where applicable.

5 — In the public tender for licensing local radio programme services, the criterion foreseen in no.3 paragraph e) is not applicable for ranking purposes.

6 — The regulation densifies the ranking criteria for the candidatures to tender and assigns to each of them a relative scoring.

7 — The candidatures to public tender for national and regional radio programme services are assessed by the regulatory entities in accordance with their respective competences.

8 — The candidatures to public tender for local radio programme services are assessed by the ERC.

9 — The regulation stipulates the deposit value and the respective release regime in accordance with the principles of adaptation and proportionality in view of compliance with the obligations it seeks to safeguard, bearing in mind the type and field of coverage of the programme services to be licensed.

10 — The tender specifications stipulate the terms for exercising activity and they must be available as from the date of publication of the order referred to in no.1 until the day and time of the opening of the attendant public act under the terms defined therein.

11 — The ERC and the national regulatory authority for communications are required to make their opinion known in advance about the object of the tender, the respective regulation and tender specifications within 20 business days after their receipt.

12 — Once the timeframe referred to in the preceding number has elapsed, the draft regulation is submitted for a 30-day period, to public appreciation and to this end it is published at the websites of the responsible government departments.

#### Article 20

#### **Public tender on digital platforms**

The terms of licensing for the carrying out of radio activity through digital platforms on which the same radio signal supports several programme services are regulated by specific legislation.

#### Article 21

#### **Authorisations**

The authorisation requests for the exercising of radio activity are sent to the ERC and accompanied by the following documents:

- a) Memorandum of association or articles of association of the applicant and access code to the permanent certificate of the applicant or up-to-date commercial registration certificate;
- b) Designation, type and description of the programme service to be authorised;
- c) Editorial statute;
- d) Description of the human and technical resources to be assigned to the project;
- e) Documentary evidence that the tax and social security situation of the applicant is up-to-date or authorisation, under the terms foreseen by law, so that the ERC can consult the respective tax and social security status.

#### Article 22

#### **Instigation of proceedings**

1 — The licensing processes referred to in article 19, no.7 are instigated by the ERC which submits them to the national regulatory authority for communications to take a

decision about the terms of admission and ranking of the candidatures pertaining to their competences.

2 — The licensing or authorisation processes referred to in article 19, no.8 and in article 21 are instigated by the ERC which requests a decision from the national regulatory authority for communications about the technical conditions of the candidatures.

3 — The opinion referred to in the preceding number is of a binding nature and it must be issued within 15 days.

4 — The ERC notifies the applicants about any shortcomings detected in the respective processes and these must be rectified within the subsequent 15 days.

5 — The application processes for awarding the license which do not meet the terms of admission foreseen in the order which put out the tender and in the respective regulations are excluded by the competent regulatory entities based on a well-founded decision.

6 — The processes admitted must be subject to a decision to award the licenses or not required within 90 days in the case of a licensing procedure or 15 days in the case of authorisation.

7 — Processes pertaining to the transfer of licenses foreseen in article 4 no.9 are instigated by the ERC which submits them to the national regulatory authority for communications to make a decision about the transfer of the respective frequency usage rights in accordance with the regime applicable to electronic communications and radio communications' services and networks.

8 — The processes referred to in the preceding number are subject to a well-founded decision by the competent regulatory entities and they must, in the case of the ERC, be subject to deliberation within 45 days after learning of the decision by the national regulatory authority for communications.

## Article 23

### **Awarding of licenses or authorisations**

1 — It is incumbent upon the ERC to assign, renew, alter or revoke the licenses and authorisations for exercising radio activity.

2 — The decisions to award or not to award licenses are specifically well-founded by reference to compliance with the terms of admission and to each of the ranking criteria, as well as to those questions raised by an audience of interested parties.

3 — The decision to award an authorisation may only be refused by the ERC subject to a well-founded decision when involving the following:

a) Compliance by the operators and the respective projects with the legal obligations applicable;

b) The technical reliability of the project submitted;

c) The up-to-date nature of the tax and social security situation of the applicant.

4 — Decisions to award licenses or authorisations must also set out the purposes, obligations and conditions to which the licensed or authorised operators and the respective programme services are bound, notifying the parties concerned and making them available at the ERC website.

5 — Licenses pertaining to radio activity contain, namely, the identification and head offices of the holder, the classification and designation of the respective programme services and the coverage area.

6 — The standard format of the licenses referred to in the preceding number is approved by the ERC.

7 — It is incumbent upon the national regulatory authority for communications to award, renew, alter or revoke the license conferring the usage rights for the radio frequencies intended to make available the radio programme services under the terms foreseen in Law no.5/2004 of 10 February, altered by Decree Law no.176/2007 of 8 May, by Law no.35/2008 of 28 July and by Decree Laws nos.123/2009 of 21 May and 258/2009 of 25 September, notwithstanding the licensing regime determined in this law.

#### Article 24

##### **Operator registration**

1 — It falls to the ERC to organise a radio operator register and of the respective programme services with a view to the publicising of their ownership, their organisation, their operation and their obligations, as well as the protection of their designation.

2 — The ERC shall carry out the registrations and annotations on an ex officio basis which derive from its licensing and authorisation activity.

3 — Radio operators are required to inform the ERC about any elements required for registration purposes, as well as seeing to their updating, under the terms defined in Regulatory Decree 8/99 of 9 June, altered by Regulatory Decree nos.7/2008 of 27 February and 2/2009 of 27 January.

4 — The supervision of the legal conformity of the registration elements complies with the procedures foreseen in the ERC Articles of Association, approved by Law no.53/2005 of 8 November.

#### Article 25

##### **Commencement of broadcasts**

1 — Radio operators must commence the broadcasts of the programme services licensed or authorised within six months after the final decision date to award the attendant license.

2 — In the event of the tender referred to in article 19 and in the case of national and regional programme services, the coverage obligations and respective staging are determined in the tender regulations.

#### Article 26

##### **Observance of the licensed or authorised project**

1 — The radio operator is required to comply with the terms and conditions of the licensed or authorised programme service.

2 — Project modification is subject to the specific approval of the ERC and it may only occur:

- a) One year after the awarding of the authorisation or assignment of the respective programme service;
- b) Two years after the awarding of the license or assignment of the respective programme service or after approval of the latest modification;

3 — The modification request must be duly well-founded, bearing in mind, namely, the technological and market evolution as well as the implications for the potential audience of the programme service in question.

4 — The ERC shall decide within 60 days after the modification request date, bearing in mind its impact on the diversity and pluralism of radiophonic offer in the respective geographic coverage area and the safeguarding of a local news' component.

5 — The modification of the licensed or authorised projects may encompass the alteration of the respective classification in terms of programming content.

6 — Radio operators with authorised programme services may also request the alteration of the respective classification in terms of the coverage area under the terms foreseen in the previous numbers.

#### Article 27

##### **Term of licenses or authorisations**

1 — Licenses and authorisations for exercising radio activity are issued for a period of 15 years and they are renewable for equal periods.

2 — The request for the renewal of licenses or authorisations must be submitted to the ERC between 240 and 180 days before the end of the respective term.

3 — The ERC shall decide upon the request for the renewal of licenses or authorisations within 90 days prior to the end of the respective term.

4 — The renewal of licenses and authorisations is granted when regular compliance with the legal obligations which radio operators and the respective programme services are subject to, namely the up-to-date tax and social security situation, has been verified by the ERC in the context of its ongoing regulation and supervision activity.

#### Article 28

##### **Cancellation and suspension of licenses or authorisations**

1 — Licenses or authorisations are cancelled upon termination of their term or by revocation pursuant to the law.

2 — Licenses and authorisations may be suspended in those cases and under those terms foreseen in article 70 and revoked according to the stipulations of article 73.

3 — The revocation and suspension of licenses or authorisations are the competence of the ERC.

### CHAPTER III **Programming**

#### SECTION I

## **Freedom of programming and information**

### Article 29

#### **Operator autonomy**

1 — The freedom of expression of thought through radio activity includes the basic citizens' right to free, pluralist information which is essential for democracy and the social and economic development of the country.

2 — Except in those cases foreseen in this law, the exercising of radio activity is based on the freedom of programming and the government or any sovereign body cannot - with the exception of the courts - prevent, restrict or impose the broadcasting of any programmes.

### Article 30

#### **Limits to the freedom of programming**

1 — Radio programming must respect the dignity of the human being and the fundamental rights, freedoms and guarantees.

2 — Radio programme services may not, through the programming elements they broadcast, incite racial, religious, political hatred or that is generated by colour, ethnic or national origin, gender, sexual orientation or disability.

3 — Radio operators are forbidden from assigning, on whatsoever basis, political propaganda spaces, notwithstanding the provisions of this law regarding airtime rights.

### Article 31

#### **Right to information**

1 — Access to sites open to the public for the purposes of news' coverage is subject to the Journalist Statute, approved by Law no.1/99 of 13 January, altered by Law no.64/2007 of 6 November.

2 — The news coverage of any events through radio activity is subject to the applicable legal regulations regarding copyright and related rights, including those pertaining to the free use of protected works or services.

3 — The holders of rights deriving from the organisation of shows or other public events may not object to the radio broadcasting of short extracts which are intended to inform about the essential content of the events in question.

4 — The exercising of the right to information about sports events, namely through their radio commentary or reporting, cannot be limited or restricted by the requirement for any financial recompense, except for that which is only intended to bear any costs deriving from the provision of technical or human resources specifically requested to this end by the operator.

5 — The provisions of the previous number above apply to extra- Community operators, provided that equal treatment is bestowed upon national operators by the legislation or authorities to which they are subject at sports events of a similar nature.

6 — Any disputes deriving from the application of the provisions of nos. 3 and 4 shall be settled, on an urgent basis, by the ERC, and its decision is of a legally binding nature.

SECTION II  
**Operator obligations**

Article 32  
**General obligations of radio operators**

1 — All radio operators must ensure in their programming, namely through self-regulation practices, compliance with airtime ethics which ensures respect for the dignity of the human person, for basic rights and any other constitutional values, in particular the development of the personality of children and teenagers.

2 — The following constitute general obligations of radio operators in each of their programme services:

- a) To ensure the broadcasting of diversified programming which includes regular news spaces;
- b) To ensure independent programming and information vis-à-vis the political authority or the economic authority;
- c) To ensure respect for the pluralism, accuracy and impartiality of information;
- d) To ensure the exercising of the rights to reply and correction under the terms enshrined in law and in the constitution;
- e) To ensure the exercising of the right to airtime during electoral periods under the terms enshrined in law and in the constitution;
- f) To ensure the broadcasting of programmes which promote Portuguese culture, language and music;
- g) To ensure the airtime identification of the respective programme services.

3 - A further obligation of the local mainstream or news thematic programme services is the broadcasting of programming, including news, with relevance to the audience of the attendant geographic coverage area, namely in the social, economic, scientific and cultural areas.

4 — The application of no. 2, paragraphs a), c) and e) to the thematic programme services must bear in mind their specific programming model.

Article 33  
**Editorial autonomy and responsibility**

1 — Each programme service must have someone responsible for the orientation and supervision of the broadcast contents.

2 — Each programme service which includes news programming must have someone responsible for news.

3 — The designation and dismissal of the person responsible for the news content of the broadcasts are the competence of the radio operator, having heard the editorial office.

4 — The prior hearing of the editorial council is dispensed with as regards the appointment of the first person responsible for the news content of the broadcasts of each programme service and in confessional and doctrinal programme services.

5 — Management or leadership posts in the field of news are exercised with editorial autonomy and the radio operator is forbidden from interfering with the production of news contents, as well as with the form of their presentation.

6 — The provisions of the previous number exclude any guidelines aimed at the strict acceptance of legal stipulations whose breach brings about criminal or administrative offence liability by the radio operator.

#### Article 34

##### **Editorial statute**

1 — Each programme service must adopt an editorial statute which clearly defines their orientation and their aims and includes an undertaking to ensure respect for the rights of listeners, ethical principles and, where applicable, the professional ethics of journalists.

2 — The editorial statute is drawn up by the responsible parties referred to in the preceding article, having heard, where applicable, the editorial council and subject to acceptance by the proprietary entity and it must be referred within 60 days subsequent to the start of the broadcasts, to the ERC.

3 — Any alterations made to the editorial statute follow the terms of the provisions of the preceding number.

4 — In the case of programme services which have already started their broadcasts without having yet referred their editorial statute to the ERC, the timeframe referred to in no.2 shall commence as from the date of coming into force of this law.

5 — The editorial statute of the radio programme services must be made available on a support suitable for their knowledge by the public, in particular as regards the respective websites.

#### Article 35

##### **News services**

Radio operators who provide mainstream or news thematic programme services must produce, and disseminate therein, on a regular, daily basis, at least three news' services, between 7 a.m. and 12 midnight.

#### Article 36

##### **Professional qualification**

1 — The management, coordination or editorial duties, as well as news' services, must be assured by journalists or people equivalent to journalists.

2 — In local programme services, the editorial duties and news services may also be assured by employees from the news area, duly accredited under the terms of the Journalist Statute, approved by Law no.1/99 of 13 January, altered by Law no. 64/2007 of 6 November and Decree Law 70/2008 of 15 April provided that the works produced by them do not exceed half the daily broadcasting time dedicated to news.

#### Article 37

##### **Own Programming**



1 — Radio programme services operate with their own programming, except in those cases especially foreseen in this law.

2 — Programme services must indicate their designation and the broadcasting frequency at least once an hour and whenever they resume a specific programming segment.

#### Article 38

### **Number of hours of broadcasting**

The programme services broadcast by Hertzian terrestrial media must operate 24 hours a day.

#### Article 39

### **Recording and registration of broadcasts**

1 — The broadcasts must be recorded and stored for the minimum period of 30 days unless some other longer period is determined by law or by court decision.

2 — Radio operators must send the entities representing the authors, producers, artists and performers, when the latter so request giving due notice to this end, the monthly list of works and phonograms broadcast by the respective programme services, indicating, to wit, the title of the work, the performer and, whenever applicable, the respective producer and broadcasting date.

#### Article 40

### **Advertising and sponsorship**

1 — Radio advertising is subject to the provisions of the Advertising Code, with the special features foreseen in the numbers below.

2 — The insertion of advertising cannot affect the integrity of programmes, having to bear in mind their specific breaks, duration and nature.

3 — The dissemination of advertising materials must not take up, on a daily basis, more than 20% of the total broadcasting time of the licensed programme services.

4 — Sponsored programming services must include, necessarily at the start thereof, specific reference to this fact.

5 — The content and programming of a sponsored broadcast may not, under any circumstances, be influenced by the sponsor, in such a way as to affect the responsibility and editorial independence of the radio operator or the respective directors.

6 — The contents or sponsored programmes may not induce the purchase or lease of the goods or services of the sponsor or third parties, particularly by way of specific promotional references to said goods or services.

7 — News services and political information programmes may not be sponsored.

## SECTION III

### **Portuguese music**

Article 41  
**Broadcasting of Portuguese music**

1 — The musical programming of the radio programme services must be filled by a minimum quota varying between 25% and 40% of Portuguese music.

2 — For the purposes of this article, Portuguese music is taken to mean musical compositions:

*a)* Which convey the Portuguese language or reflect Portuguese cultural heritage, being inspired, namely, by its characteristic traditions, environments or sounds, whatever the nationality of their authors or performers; or

*b)* Which, though they do not convey the Portuguese language for reasons associated with the nature of the musical genres practised, do represent a contribution to Portuguese culture.

Article 42  
**Broadcasting quotas in the public service**

The quotas of Portuguese music in the public radio service are set in the respective concession agreement and the broadcasting percentage in its first programme service must not be less than 60% of all the music they broadcast.

Article 43  
**Music in the Portuguese language**

The quota of Portuguese music determined under the terms of article 41 no.1 must be filled by at least 60% of music composed or performed in Portuguese by citizens from European Union Member States.

Article 44  
**Recent music**

The quota of Portuguese music determined under the terms of article 41, no.1 must be filled by at least 35% of music whose first phonographic edition or public communication has been carried out during the last 12 months.

2 — The provisions of the preceding number do not apply to programme services dedicated exclusively to the broadcasting of phonograms published more than one year ago.

3 — For the purposes of supervising compliance with no.1, the authors, the publishers or other entities must, on the release date of Portuguese music works, defined under the terms of this law, notify this fact to the ERC.

Article 45  
**Exceptions**

1 — The regime set out in this section does not apply to musical thematic programme services whose specific programming model is based on the broadcasting of musical genres which are insufficiently produced in Portugal.

2 — The determination of the programme services encompassed by the previous number is incumbent upon the ERC which makes public the criteria to be followed for the purposes of the respective qualification.

#### Article 46 **Regulations**

It is incumbent upon the government, having heard the associations representing the sectors involved and bearing in mind the indicators available in terms of the consumption of Portuguese music on the national record market, to determine, by way of an order, for on-yearly periods, the broadcasting quotas foreseen in article 41 no.1.

#### Article 47 **Calculation of the percentages**

1 — For supervision purposes, the calculation of the percentages foreseen in this section is carried out every month and is based on the number of compositions disseminated by each programme service in the preceding month.

2 — The percentages referred to in this section must also be respected in the programming broadcast between 7 a.m. and 8 p.m.

### CHAPTER IV **Public service**

#### Article 48 **Principles**

1 — The structure and operation of the public service radio operator must safeguard its independence vis-à-vis the government, the public administration and the other public authorities, as well as ensuring the possibility of the expression and comparison of the various schools of thought.

2 — The public radio service ensures compliance with the principles of universality and national cohesion, diversification, quality and indivisibility of programming, pluralism and thoroughness, the impartiality and independence of information, as well as the innovation principle.

#### Article 49 **Specific obligations of the public radio service concessionaire**

1 — Pursuant to the principles set out in the preceding article, the public radio service concessionaire must present reference programming which promotes the cultural and

civic enhancement and education of viewers, ensuring the access of everyone to quality information, education and entertainment.

2 — It is incumbent upon the concessionaire, to wit:

- a) To provide varied, all-encompassing programming, aimed at and accessible to the whole population, which promotes cultural diversity and bears in mind the interests of minorities;
- b) To promote and disseminate national artistic creation and the knowledge of Portuguese historic and cultural heritage, ensuring public access to national cultural expressions and their appropriate news coverage;
- c) To provide news which is impartial, thorough, plural and contextualised, ensuring the news coverage of the main national and international events;
- d) To ensure the production and broadcasting of educational and entertainment programmes aimed at a young and children's audience, contributing to their education;
- e) To ensure the broadcasting of cultural, educational and news programmes for specific publics, including those going to make up the various immigrant communities in Portugal;
- f) To take part in educational activities for the media, ensuring, namely, the broadcasting of programmes geared towards this objective;
- g) To promote the broadcasting of Portuguese music, of diversified genres, bearing in mind the mission of its programme services;
- h) To broadcast regular programmes aimed at disseminating Portuguese language and culture, particularly aimed at the Portuguese residents outside Portugal and to the nationals of other countries where Portuguese is the official language;
- i) To ensure the exercising of airtime rights, the right to reply and political argument under the terms enshrined by the constitution and by law;
- j) To ensure the broadcasting of messages whose dissemination is requested by the president of Portugal, the speaker of parliament or the prime minister and, in regional broadcasts, particularly those aimed at the autonomous regions of the Azores and Madeira, by the presidents of the respective parliaments and regional governments;
- l) To grant airtime to the public administration, with a view to the dissemination of news in the general interest, to wit, in terms of health, civil defence and public safety;
- m) To maintain and update sound archives;
- n) To ensure the maintenance, updating and making available to the public, in accordance with the applicable museum principles and regulations, of a representative collection of the evolution of the radio media, under the terms of the concession agreement;
- o) To develop cooperation with radio operators from Portuguese-speaking countries;
- p) To maintain cooperation and exchange relations with international organisations and foreign entities related with radio activity.

#### Article 50

#### **Public radio service concession**

1 — The public radio service is carried out through the broadcasting and technology media which best ensure full coverage of the territory and the satisfaction of the news, education, cultural and entertainment requirements of citizens.

2 — The public radio service concession is awarded to Rádio e Televisão de Portugal, S. A. for 15-years periods under the terms of the agreement to be signed between the state and the concessionaire.

3 — The concession agreement stipulates, in accordance with the provisions of this chapter, the rights and obligations of each of the parties, having to define the objectives to be achieved and the qualitative and quantitative criteria which assure their materialisation, as well as the respective forms of assessment.

4 — The concession agreement defines the programme services and complementary media required for carrying out the public service, as well as the respective mission, ensuring innovative, quality programming which takes into account the general public and their various segments, including the young public, and paying particular attention to news, culture, classical music and knowledge.

5 — The concession agreement also determines the restrictions in terms of commercial advertising applicable to the public radio service.

6 — The purpose of international broadcasts - bearing in mind the national interests pertaining to the connection with Portuguese communities spread all around the world or to cooperation with Portuguese-speaking countries - is the assertion, enhancement and defence of the Portuguese language and image worldwide.

7 — The regional broadcasts particularly assigned to the autonomous regions of the Azores and Madeira must bear in mind the respective social and cultural realities and enhance regional production.

8 — The concession agreement is subject to the opinion of the ERC under the terms foreseen in the respective Byelaws, approved by Law no.53/2005 of 8 November.

9 — The concession agreement must be reviewed at the end of each four-year period, notwithstanding any alterations which may occur in the meantime.

10 — The review process referred to in the preceding number must bear in mind the appraisal of compliance with the public service and consider a public consultation about the reference objectives and criteria for the subsequent four-year period.

#### Article 51

#### **Financing and monitoring of implementation**

1 — The state assures the financing of the public radio service and strives for its appropriate application under the terms of Law no. 30/2003 of 22 August, altered by Decree Laws nos. 169-A/2005 of 3 October, 230/2007 of 14 June and 107/2010 of 13 October which approves the financing model for the public radio and TV service.

2 — Public financing must respect the principles of proportionality and transparency.

3 — The concession agreement must envisage a monitoring system which verifies compliance with the missions of public service and the transparency and proportionality of the associated financial flows.

4 — The public radio service concessionaire is subject to an annual audit to be arranged by the ERC which verifies the smooth performance of the concession agreement.

#### CHAPTER V

#### **Rights to airtime, political argument, reply and correction**

SECTION I  
**Common provision**

Article 52  
**Calculation of broadcasting times**

Radio operators ensure the calculation of airtime, political argument and reply or correction times for the purposes of this chapter, informing the parties concerned of the respective results.

SECTION II

**Right to airtime**

Article 53  
**Access to the right to airtime**

1 — Political parties, trade union and professional organisations and organisations representing economic activities, as well as environmental defence and consumer associations are assured the right to airtime in the public radio service as are non-governmental organisations which promote the equality of opportunities and non-discrimination.

2 — Airtime is taken to mean the programming space which is the responsibility of the holder of the right, a fact which must be specifically mentioned at the start and at the end of each programme.

3 — The entities referred to in no.1 are entitled, free-of-charge, to the following airtimes every year:

- a) Ten minutes per party represented in parliament or in the parliaments of the autonomous regions, plus fifteen seconds for each elected member of parliament;
- b) Five minutes per party not represented in parliament or in the parliaments of the autonomous regions, with participation in the latest general elections, plus fifteen seconds for each 15,000 votes obtained at the latter;
- c) Sixty minutes, per category, for trade union and professional organisations and organisations representing economic activities, as well as sixty minutes for the other entities indicated in no. 1, to be assigned on a pro rata basis in accordance with their representativeness;
- d) Ten minutes for any other entities entitled to the airtime assigned by law.

4 — As regards the autonomous regions, the airtime referred to in the previous number is exercised by the parties which stood for election in the regional parliaments in the programme services specifically intended for the respective region.

5 — Each holder cannot use airtime more than once every 15 days, nor in broadcasts which last longer than five or less than two minutes, unless their airtime is generally less.

6 — The people responsible for programming must organise, with the cooperation of the holders of airtime and in accordance with this law, general plans for the usage of said time.

7 — In the event of irremediable impossibility of any agreement about the plans referred to in the preceding number and at the request of the parties concerned, it is incumbent upon the ERC to proceed with arbitration.

#### Article 54

##### **Limitation of the right to airtime**

1 — The exercising of the right to airtime cannot occur on Saturdays, Sundays and public holidays and it must also be suspended one month prior to the date set for the commencement of the campaign period in any electoral or referendum, under the terms of the respective legislation.

2 — The right to airtime is non-transferrable.

#### Article 55

##### **Broadcasting and the reservation of the right to airtime**

1 — Airtimes are broadcast in the national programme service with the largest audience between 10 a.m. and 8 p.m.

2 — The holders of the right to airtime must request the reservation of the airtime to which they are entitled within 48 hours before broadcasting and the respective recording must be carried out or the pre-recorded materials delivered within 24 hours before the broadcasting of the programme.

3 — The holders of the right to airtime are assured the essential technical media for carrying out the respective programmes under wholly equal conditions.

#### Article 56

##### **Forfeiture of airtime**

Failure to comply with the timeframes foreseen in the preceding article determines forfeiture of the right, unless it has occurred owing to a fact not attributable to its holder, in which case any unused time may be accumulated with that of the programmed usage subsequent to cessation of the impediment.

#### Article 57

##### **Right to airtime during electoral periods**

During electoral periods, use of the right to airtime is regulated by the electoral act.

### SECTION III

#### **Right to political argument**

## Article 58

### **Right to political argument of the opposition parties**

1 — The parties represented in parliament which do not form part of the government have a right to political argument in the public radio service and in the same programme service with regard to any political declarations made by the government which directly concerns them.

2 — The duration and prominence granted for the exercising of the right referred to in the previous number above shall be equal to the declarations which gave rise to them.

3 — When more than one party has requested, through the respective representative, the exercising of the right, the time is assigned on a pro rata basis in equal parts amongst the various holders and it may never be less than one minute for each person involved.

4 — The right to political argument is subject, with the necessary adaptations, to the procedures foreseen in this law for the exercising of the right to reply.

5 — For the purposes of this article, only declarations of general or sectorial policy carried out by the government in its name and identifiable as such are considered, not highlighting, namely, any declarations by government members about matters pertaining to the management of the respective departments.

6 — The provisions of the preceding numbers are accordingly applicable, in the context of the programme services especially intended for the autonomous regions, to the right to political argument of the parties represented in the regional parliaments which do not form part of the respective regional governments.

## SECTION IV

### **Rights to reply and correction**

## Article 59

### **Assumptions of the rights to reply and correction**

1 — Any individual or corporate body, organisation, service or public body which has been subject to references, even if indirect, which may affect their reputation and good name, has the right to reply in radio programme services.

2 — The entities referred to in the previous number are entitled to correction on the radio whenever untrue or erroneous references have been made related with them.

3 — If the programme in which the references referred to in the preceding numbers has been disseminated in a chain broadcast, the rights to reply or correction may be exercised at the entity responsible for said broadcast or any operator who has disseminated it.

4 — The right to reply or correction are prejudiced if, with the specific agreement of the party concerned, the person responsible for the respective programme service has corrected or clarified the text or image in question or has been provided with some other means of setting out its position.

5 — The right to reply or correction are independent of any criminal procedure owing to publication, as well as the right to compensation for any damages caused thereby.



## Article 60

### **Right to hear the broadcast**

1 — The holder of the right to reply or correction, or whosoever legitimately represents it under the terms of no.1 of the next article, may require, for the purposes of its exercising, the hearing of the recording of the broadcast and a copy thereof by way of payment of the cost of the support used which must be provided to it within no more than 24 or 48 hours, depending on whether the request is made on a business day or not.

2 — The request for hearing suspends the timeframe for the exercising of the right which shall be resumed 24 hours after the time at which the recording of the broadcast has been provided to it.

## Article 61

### **Exercising of the rights to reply and correction**

1 — The exercising of the rights to reply or correction must be requested by the holder itself, its legal representative or by its heirs within the 20 days subsequent to the broadcast.

2 — The timeframe of the previous number is suspended when, on the grounds of force majeure, the people referred to therein are prevented from enforcing the exercising of the right in question.

3 — The text of the reply or correction must be submitted to the people responsible for the broadcast, with the signature and identification of the author and by means of a procedure which proves its receipt, specifically invoking the right to reply or correction or the competent legal provisions.

4 — The content of the reply or correction is limited by the direct, useful relationship with the references which brought them about and it may not exceed 300 words or the number of words of the intervention which gave rise to it, if greater.

5 — The reply or correction may not contain expressions which are disproportionately rude or which involve criminal or civil liability which only the author of the reply or correction incurs.

## Article 62

### **Decision regarding the broadcasting of the reply or correction**

1 — When the reply or correction are untimely, derive from someone without legitimacy, manifestly lack any grounds or run counter to the provisions of nos.4 and 5 of the previous article, the person responsible for the programme service in question may refuse to broadcast it, informing the party concerned, in writing, about the refusal and its justification within 24 hours subsequent to receipt of the reply or correction.

2 — In the event that the reply or correction breach the provisions of nos. 4 or 5 of the previous article, the person responsible shall invite the person concerned, within the

timeframe foreseen in the preceding number, to proceed with the elimination, in the subsequent 48 hours, of the passages or expressions in question, without being entitled to refuse the broadcasting of the entire text.

3 — In the event of the right to reply or correction not having been satisfied or having been unjustifiably refused, the party concerned may, within 10 days after the refusal or end of the legal timeframe, appeal to the court of the area of its registered offices for it to satisfy the right, or to the ERC under the terms of the specifically applicable legislation.

4 — Having requested the judicial notification of the person responsible for the programming who has not satisfied the right of reply or correction, he or she is notified forthwith by post to answer within two business days after which the decision shall be given in the same timeframe which may be subject to a merely devolutive appeal.

5 — Documentary evidence is only allowed when all the documents have been attached to the initial request and the reply.

6 — In the event of there being grounds for the request, the programme service shall broadcast the reply or correction within the timeframe stated in no.1 of the following article, accompanied by the mention that this has been put into effect owing to a judicial decision or a decision by the ERC.

#### Article 63

### **Broadcasting of the reply or correction**

1 — The reply or correction is broadcast within 24 hours after receipt of the respective text by the person responsible for the programme service in question, subject to the provisions of nos. 1 and 2 of the preceding article.

2 — The reply or correction are broadcast free-of-charge in the same programme or, should this not prove possible, at an equivalent broadcasting time.

3 — The reply or the correction must be broadcast as many times as there were broadcasts which made the reference in question which led thereunto.

4 — The reply or correction are read by an announcer from the programme service in such a manner as to ensure they are easy to understand and it may include other audio components whenever the reference which led thereunto used a similar technique.

5 — The broadcasting of the reply or correction may not be preceded nor followed by any comments, with the exception of those required to point out any inaccuracy or factual error which may bring about a new reply or correction under the terms of article 59 nos.1 and 2.

#### CHAPTER VI

### **Regulations applying sanctions**

#### SECTION I

### **Forms of liability**

#### Article 64

### **Third-party liability**

1 — When determining the forms of putting into effect the third-party liability deriving from facts committed through radio activity, the general regime is observed.

2 — Radio operators are jointly and severally liable with the people responsible for the broadcasting of pre-recorded materials, with the exception of those broadcast under the terms of the rights to airtime, political argument, reply and correction or during the course of interviews or debates involving people not contractually linked to the operator.

#### Article 65

#### **Criminal liability**

1 — Any acts or behaviour prejudicing legal assets protected under the criminal code, perpetrated through the radio, are punished under the terms of the criminal law and the provisions of this law.

2 — The liable parties mentioned in article 33 are only criminally liable when they do not object, being able to do so, to having committed the crimes referred to in no.1 through suitable actions to avoid them, in which case the penalties set out in the attendant legal categories shall apply, reducing their limits by one third.

3 — In the event of declarations correctly reproduced or opinion interventions, provided by duly identified people, only the latter may be held liable, unless their content constitutes incitement to racial, religious, political hatred or hatred generated by colour, ethnic or national origin, gender or sexual orientation, or incitement to the commission of a crime, and its broadcasting cannot be justified according to journalistic criteria.

4 — In the event of broadcasts not consented to, the liable party shall be the one who determined its broadcasting.

5 — Those technicians in the pay of the radio operators are not responsible for any broadcasts to which they made a professional contribution if they cannot be expected to have been aware of the criminal nature of their act.

#### Article 66

#### **Illegal radio activity**

1 — Whosoever carries out radio activity without the attendant qualification is subject to a prison sentence of up to 3 years or a fine of up to 320 days.

2 — Any assets used for the illegal exercising of radio activity are declared as having reverted to the state, notwithstanding any third-party rights in good faith.

3 — To wit, the provisions of no.1 are applicable in the event of:

a) The exercising of activity by an entity other than that licensed or authorised to this end;

b) Breach of any decision to revoke the license.

#### Article 67

#### **Qualified disobedience**

The person responsible for programming, or whosoever replaces him/her, is guilty of the crime of qualified disobedience when:

- a) He/she fails to accept any court decision ordering the broadcasting of the reply or correction under the terms of article 62 no.6;
- b) He/she fails to promote the dissemination of court decisions under the precise terms referred to in article 82;
- c) He/she fails to comply with the deliberations of the ERC pertaining to the exercising of the rights to airtime, to reply or correction.

#### Article 68

#### **Attack on the freedom of programming and information**

1 — Whosoever prevents or disrupts the broadcasting of radio programme services or seizes or damages the materials required to exercise radio activity, except for those cases foreseen by law and with a view to attacking the freedom of programming and information, is subject to a prison sentence of up to 2 years or a fine of up to 240 days, unless he/she is subject to some more serious sentence under the terms of the criminal law.

2 — The application of the sanction foreseen in the preceding number in no way prejudices the putting into effect of third-party liability for any damages caused to the radio operator.

3 — If the infringing party is an agent of the state or a state-owned corporate body and acts in this capacity carrying out the facts described in no.1, he or she shall be subject to imprisonment of up to 3 years or a fine of up to 320 days, unless he or she is subject to some more serious penalty under criminal law.

#### Article 69

#### **Administrative offences**

1 — The following constitute administrative offences, subject to an administrative fine:

a) From €1,250 to €12,500, failure to observe the provisions of article 9 no.4, article 24 no.3, article 32, no.2, paragraph g), article 82 no.1, a breach of the provisions of the first part of no.1 of article 54 as well as a breach of the timeframe and omission of the mention referred to in article 62 no.6;

b) From €3,000 to €30,000, failure to comply with the provisions of article 41 no.1, articles 42 and 43 and article 47 no.2;

c) From €3,750 to €25,000, failure to comply with the provisions of article 7 nos.2 and 3, article 33 nos.2 and 4, article 34, article 37 no.2, articles 38 and 39, article 40 nos. 2 to 7, article 53 no.5, article 55 no.1, article 58 nos. 1 to 3 and article 63, the exercising of radio activity before the payment of any charges referred to in article 14 no.1, as well as breaches of the provisions of the second part of no.1 and no.2 of article 54 and the timeframe determined in article 60 no.1;

d) From €10,000 to €100,000, failure to comply with the provisions of article 3, article 4 nos.3 to 6, articles 10 and 11, articles 15, 16 and 25, article 26 nos. 1 and 2, article 30 nos. 2 and 3, article 31 no.1, articles 35 and 36, article 37 no.1, article 76 no.3, the cessation of programme services which fail to meet the requirements set out in of article 4 nos.9 and 10, denial of the right foreseen in article 60 no.1, as well as permission, by the holder of the license or authorisation, to operate the programme services by third parties.

2 — In the event of local coverage programme services, the minimum and maximum limits of the administrative fines foreseen in the preceding number are reduced to a third.

3 — In the event of negligent behaviour, the minimum and maximum limits of the administrative fines applicable are cut by half.

#### Article 70

##### **Ancillary sanctions**

1 — The administrative offences foreseen in no.1 paragraphs *b)* and *d)* of the preceding article may give rise, in view of the seriousness of the illegal act and the blame of the agent, to the ancillary sanction of suspending the license or authorisation of the programme service in which the infringement was committed for a period not exceeding 30 days.

2 — Failure to comply with the provisions of article 30 nos. 2 and 3, punishable under the terms of no.1 paragraph *d)* of the preceding article, may give rise, in view of the seriousness of the illegal act and the blame of the agent, to the ancillary sanction of suspending the broadcasts of the programme service in which the infringement was committed for a period not exceeding 30 days, unless it involves advertising broadcasts, which are subject to the ancillary sanctions and preventive measures set out in the Advertising Code.

3 — Failure to comply with the provisions of article 30 nos. 2 and 3, when committed during the exercising of the right to airtime, and article 54 no.2, punishable under the terms of paragraph *c)* of the preceding article, may give rise, in view of the seriousness of the illegal act and the blame of the agent, to the ancillary sanction of the suspension of the same right for periods of 3 to 12 months, with a minimum of 6 months in the event of a reoffence, without prejudice to any other sanctions foreseen by law.

4 — The application of an administrative fine for a breach of the provisions of articles 10 and 11, article 26 nos. 1 and 2, article 30 nos. 2 and 3 and in articles 35 to 37, may also give rise to the ancillary sanction of the publicising of the enforceable judgement under the terms stipulated by the competent entity.

5 — The practising of the administrative offence foreseen in no.1 paragraph *d)* of the previous article above, through the programme service which has been subject to the application of two measures to suspend the license or authorisation in the three years prior to practising the illicit act, shall give rise to the revocation of the license or authorisation.

6 — Any litigious appeal against the application of ancillary sanctions shall have suspensive effects until the judgement has become final.

#### Article 71

##### **Mitigating circumstances and the waiver of the suspension and the administrative fine**

1 — In the event of the occurrence of those circumstances on which the general law makes the mitigating circumstances of the sentence depend:

*a)* If it involves an administrative offence foreseen in article 69, no.1 paragraphs *a)* to *c)*, the provisions of article 18 no. 3 of the General Regime on Administrative Offences shall apply;

*b)* If it involves an administrative offence foreseen in article 69 no. 1, paragraph *d)*, the limits of the administrative fine are reduced by a third and the suspension of the license or authorisation of the programme service may not be decreed.

2 — If it involves an administrative offence foreseen in article 69 no.1, paragraph *a)*, the agent may be dispensed from the administrative fine when the circumstances occur on which the Criminal Code makes the waiver of the sentence depend.

#### Article 72

##### **Parties responsible**

The radio operator on whose programme service the infringement was committed shall be liable for the administrative offences foreseen in article 69, except as regards any breach of article 54 no.2 for which the holder of the right to airtime shall be liable.

#### Article 73

##### **Revocation of licenses or authorisations**

1 — The revocation of the licenses or authorisations granted is determined by the ERC in the event of the occurrence of:

*a)* Failure to start the programme services licensed within the timeframe determined in article 25, no.1 or the absence of broadcasts for a period exceeding two months, unless there is duly well-founded authorisation, unforeseeable circumstances or force majeure;

*b)* The operation of the programme service by an entity other than the legitimate holder of the license or authorisation;

*c)* The insolvency of the radio operator.

2 — The revocation of the licenses or authorisations may also be determined by the ERC with the third sentencing of the radio operator in the context of the same programme service within a timeframe not exceeding three years for committing an administrative offence foreseen in article 69, no.1 paragraph *d)*.

#### Article 74

##### **Suspension of enforcement**

1 — Enforcement of the suspension of the license or authorisation of the programme service may be suspended for a period of three months to one year when the operator has not been subject to an administrative offence sanction for at least one year and

the ERC may reasonably expect that the suspension will allow the objective of the suspension of the license or authorisation to be accomplished.

2 — Suspension of enforcement may be subject to the provision of a good behaviour bond, to be determined at between €1,000 and €15,000, bearing in mind the duration of the suspension and the context of the coverage of the programme service in question.

3 — Suspension of enforcement is always revoked if, during the respective period, the infringing party commits an administrative offence as foreseen in article 69, no.1, paragraph *d*).

4 — Revocation determines compliance with the suspension whose enforcement had been suspended and the infringement of the bond.

#### Article 75

##### **Abbreviated proceedings**

1 — In the event of an infringement of the provisions of article 40 no.3 and in any other case in which the ERC has a recording or some other automated registration of the facts which constitute the infringement, as soon as news of the infringement has been learned, the operator is notified:

- a*) Of the facts which constitute the infringement;
- b*) Of the legal regulations breached;
- c*) Of the sanctions applicable;
- d*) Of the timeframe granted for the presentation of a defence.

2 — The defendant may, within 10 days after notification, make its defence, in writing, indicating the means of proof that it deems should be produced.

#### Article 76

##### **Supervision**

1 — Supervision of compliance with the provisions of the present act is incumbent upon the ERC.

2 — The supervision of the broadcasting and relay stations, of the technical conditions of the broadcasts and of the protection of the radio reception thereof lies with the national regulatory authority for communications, within the context of the applicable regulations.

3 — Radio operators must provide access for supervisory agents to all the installations, equipment, documents and other elements required for the exercising of their activity.

#### Article 77

##### **Competence and sanction procedures**

1 — It is incumbent upon the ERC to instigate the administrative offence procedures foreseen in this law and upon its chair to apply the attendant ancillary administrative fines and sanctions.

2 — Administrative offence procedures are subject to the provisions of the General Regime on Administrative Offences and, in subsidiary fashion, to the provisions of the

Code of Criminal Procedure, with the exception of the special regulations foreseen by law.

#### Article 78

#### **Proceeds from the administrative fines**

The revenue from the administrative fines shall revert to:

- a) 60% to the state;
- b) 40% to the ERC.

### SECTION II

#### **Special provisions of the proceedings**

#### Article 79

#### **Form of the proceedings**

The proceedings pertaining to criminal infringements committed through radio activity are subject to the provisions of the Code of Criminal Procedure and complementary legislation, subject to the special aspects deriving from this law.

#### Article 80

#### **Territorial competence**

- 1 — The court of the district where the radio operator has its registered offices or permanent representation is competent to hear the crimes foreseen in this law.
- 2 — The provisions of the preceding number exclude any crimes committed against image and reputation, the right to privacy or any other assets of legal personality whose appreciation is the competence of the court of the district where the injured party has its registered offices/address.
- 3 — In the event of radio broadcasts by an entity not qualified under the terms of the law, and if the aspect defining competence under the terms of no.1 is not known, the Court of the District of Lisbon is competent.

#### Article 81

#### **Rules of evidence**

- 1 — To prove the assumptions for the exercising of the rights to reply or correction, and notwithstanding any other means allowed by law, the party concerned may request, under the terms of article 528 of the Civil Code of Procedure, notification of the radio operator to submit, within the reply timeframe, the recordings of the broadcast in question.
- 2 — Besides that stated in the preceding number, documentary evidence is only allowed when attached to the initial request or the reply.

#### Article 82



## **Broadcasting of the decisions**

1 — At the request of the Public Prosecutor or of the injured party, and subject to a court judgement stipulating the timeframes and timetable to this end, the operative part of final binding judgements for crimes committed through radio activity, as well as the identity of the parties, are broadcast in the programme service where the illegal act was committed.

2 — The accused in criminal proceedings announced on the radio and subsequently acquitted by a final judgement may request the court to the effect that the content of said judgement should also be announced by the radio operator on the same programme service and with an equivalent timetable, space and radio prominence.

3 — The broadcasting of the operative part of judgements referred to in the previous numbers above must be carried out in such a way as to safeguard third-party rights.

## CHAPTER VII

### **Preservation of radio heritage**

#### Article 83

#### **Records in the public interest**

1 — National and regional radio operators must organise sound and musical archives with a view to preserving any records in the public interest.

2 — The granting and use of the records referred to in the preceding number are defined by joint order of the government members responsible for culture and the media, bearing in mind their historical, educational and cultural value to the community, with the responsibility for copyright lying with the requesting entity.

## CHAPTER VIII

### **Complementary, final and transitory provisions**

#### Article 84

#### **Exercising of activity online**

Only the following articles are applicable to the exercising of radio activity solely online, directly or with the necessary adaptations: 2 and 16, article 17 no.4, articles 24, 29 to 34, 39, 40, 52, 59 to 65, 67 to 72 and 74 to 81.

#### Article 85

#### **Terrestrial digital radio**

The licenses held by analogue radio operators constitute sufficient qualification to carry out the respective activity by Hertzian terrestrial digital means under the terms to be defined in specific legislation.

#### Article 86

##### **Rectification of licenses**

1 — The exercising of local radio activity by entities which have been awarded this right by a specific administrative act and without any public tender is subject to the provisions of the present act, with the timeframes of the respective licenses commencing as from the date of the respective coming into force.

2 — The use of frequencies awarded by a specific administrative act and without any public tender for local radio programme services is subject to the regime of Law no.5/2004 of 10 February, altered by Decree Law no.176/2007 of 8 May, by Law no.35/2008 of 28 July and by Decree Laws nos.123/2009 of 21 May and 258/2009 of 25 September, with the timeframes of the respective licenses commencing as from the date of the respective coming into force of this law.

3 — The duration timeframe for licenses or authorisations foreseen in article 27 no.1 is applicable to any licenses awarded or renewed after 1 January 2008 and the ERC must promote ex officio any annotations required, applying, with regard to the others, the timeframe which has already been determined by a legislative act or that legally in force as at the date of its awarding or renewal.

#### Article 87

##### **Validly formed situations**

The provisions of article 4 nos. 4 and 5 and article 16 no.2, do not apply to any validly formed situations as at the date of coming into force of this law.

#### Article 88

##### **Repealing regulation**

Law no.4/2001 of 23 February, altered by Laws 33/2003 of 22 August and 7/2006 of 3 March are hereby repealed.

Approved on 29 October 2010.

The speaker of parliament, *Jaime Gama*.

Enacted on 12 December 2010.

Let this be duly published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 13 December 2010.

The prime minister: *José Sócrates Carvalho Pinto de Sousa.*