

Act no.95/2015 of 17 August

It establishes the rules and duties of transparency to which the State's advertising campaigns are subject, as well as the rules that apply to its distribution in the country, through the local and regional media, repealing Decree-Law no. 231/2004, of 13 December.

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

Article 1

Aims

1 - The present law establishes the rules and the obligations of transparency to which the institutional state advertising campaigns are subject.

2 - This law also establishes the rules that apply to the distribution of state institutional publicity in the country through local and regional media.

Article 2

Scope

The institutional advertising actions of the following entities are covered by the present law:

- a) Direct administration services of the State;
- b) Public institutes;
- c) Entities that are part of the public corporate sector.

Article 3

Concepts

For the purposes of the present law the following meanings are assumed:

a) 'State institutional advertising' means the campaigns, information and publicity actions and any other forms of communication carried out by the entities referred to in the previous article, disclosed to a number of indeterminate recipients, with the direct or indirect purpose of promoting initiatives or disseminating a message relating to its purposes, assignments or public service missions, through the onerous acquisition of advertising spaces;

b) 'regional or local media' means those which, regardless of distribution or dissemination support and having their head office in any of the geographic areas of operation of the regional coordination and development committees, are duly registered and demonstrate that the space or broadcasting time is predominantly dedicated to publishing or disseminating content relating to political, cultural, economic, social or environmental aspects of a regional or local community, in accordance with its editorial status;

c) 'digital media' means those which, with distribution or exclusive access through digital platforms, are duly registered and demonstrate that more than half of their content, radio or television broadcasting time, as the case may be, is predominantly dedicated to publishing or regularly disseminating its own content relating to political, cultural, economic, social or environmental aspects of the regional or local community in which it operates, in accordance with its editorial status;

d) 'regional or local media' means the press, radio, television and information on electronic media which publish or disseminate content relating to aspects of the political, cultural, economic, social or environmental life of a regional or local community;

e) 'Promoting entities' means the entities covered by this law, under the terms of the previous article.

Article 4

Promotion of State institutional advertising campaigns

1 - The promotion of State campaigns or actions of institutional advertising must be developed in the pursuit of the specific responsibilities or the delegated powers of the promoting entity, when duly well-founded reasons of public interest justify it.

2 - State institutional advertising campaigns must clearly indicate their nature and the purposes to be pursued, identifying the identity of the promoting entity in a way that is perceived by the recipients.

3 - State institutional advertising campaigns should contribute to fostering a culture of respect for fundamental rights and gender equality and, wherever possible or when their object allows it, should ensure the availability of their content through appropriate media to citizens with special needs.

Article 5

Award of institutional advertising

1 - The State institutional advertising campaigns or actions referred to in the previous article may be awarded by the promoting entity to advertising agencies that meet, cumulatively, the following requirements:

a) They have been in business for more than 12 months at the date of commencement of the award process; and

b) They have curricular elements indicating the strength and professional capacity required to carry out the tasks to be contracted, namely in the area of State institutional advertising.

2 - Notwithstanding the provisions of special legislation, the award of information and advertising actions provided for in this law shall comply with the provisions of the Public Contracts Code, approved by Decree-Law no. 18/2008, of January 29, notwithstanding other schemes that may be applicable.

3 - The promoting entities shall monitor the performance of contracts concluded pursuant to the preceding paragraphs, in particular as regards subcontracting relations and the acquisition of advertising space through advertising agencies, in order to

ensure high levels of advertising acquisition efficiency and the collection of elements for their activity reports, as well as ensuring strict compliance with the rules regarding the contracting of advertising placement services.

4 - Local and regional media beneficiaries of the system provided for in this law must have their tax and social security situation up-to-date with regard to the State and Social Security.

Article 6

Prohibited state institutional advertising

1 - Informative and advertising actions may not be carried out by the entities referred to in article 2 which:

- a) Include messages with a discriminatory content, such as content which is sexist, racist, homophobic or contrary to the constitutionally enshrined principles, values and rights;
- b) incite, directly or indirectly, violence or conduct contrary to the democratic rule of law;
- c) Include symbols, expressions, drawings or images that may lead to confusion with any political or religious or social organisation.

2 - Nor is it permitted to carry out institutional advertising actions in:

- a) Local media bodies in which public entities have a direct or indirect controlling interest;
- b) Media bodies in which the entities referred to in article 2 have a direct or indirect controlling interest, with the exception of the public service agencies of Rádio e Televisão de Portugal, SA, and LUSA - Agência de Notícias de Portugal, SA, as well as any services or departments thereof;
- c) Publications occupying with commercial advertising content an area of more than 50% of the available editing space, including supplements and inserts, calculated based on the average number of editions published in the last 12 months;
- d) Publications that are not included in the press concept, according to the law;
- e) Free periodic publications.

Article 7

Duties of communication and transparency

1 - The acquisition of advertising space provided for in this law must be communicated by the promoting entity to the Media Entity Regulator (ERC) within 15 days of its contracting, by sending a copy of its supporting documentation.

2 - The entities covered by this law shall include in their respective plans and activity reports a section specifically devoted to brief information on the state institutional advertising initiatives, under the terms defined in the applicable regulations.

3 - The directors of the services and bodies covered by this law must include in the state institutional advertising information referred to in the previous number, the data related to compliance with the provisions of the following article.

Article 8

Distribution of state institutional advertising

1 - A percentage of no less than 25% of the total estimated cost of each state institutional advertising campaign of a unit value equal to or greater than €15,000 shall be assigned to the regional and local media.

2 - The provisions of the preceding paragraph shall not apply to state institutional advertising that is specifically intended for foreigners, not considering for this purpose the mere dissemination of the indication in electronic media that the advertising is specifically intended for foreigners.

3 - The distribution of advertising by the various local and regional media aims to promote the optimisation of the dissemination of the message, namely taking into account the audience and circulation of the selected media.

4 - In accordance with the provisions of the preceding paragraphs, distribution should, where appropriate for the purposes of the campaign, tend to respect the following allocation percentages:

- a) Press: 7%;
- b) Radio: 6%;
- c) TV: 6%;
- d) Digital media: 6%.

5 - Notwithstanding the provisions of paragraph 1, whenever the percentages provided for in the previous paragraph are not met, the promoting entity, when requested by the supervisory body, must technically substantiate the need to use certain local and regional media to the detriment of one another or others and prove the allocation performed.

6 - State institutional advertising carried out on at Rádio e Televisão de Portugal, SA (RTP), the concessionaire of the public radio and television services, does not count for the purposes of the allocation percentages stated in paragraph 4.

Article 9

Planning of state institutional advertising

1 - The distribution of the allocation percentages referred to in the previous article must obey the following criteria, according to each of the local and regional media:

a) Press:

- i) The geographical incidence of the publication;
- ii) the target public;
- iii) The volume of print runs and number of subscribers;
- iv) The frequency of the publications;
- v) The audience, when there is a market study; and
- vi) the printing quality of the publication;

b) Radio:

- i) the geographical impact of radio broadcasting;

- ii) the target audience for the radio broadcasting;
- iii) Radio audiences, when there is a market study;
- iv) Radio quality;

c) TV:

- i) The geographical incidence of the issue;
- ii) the target audience for which the issue is intended;
- iii) Television audiences, when there is a market study;

d) Digital media:

- i) the target audience for the electronic support;
- ii) The frequency or updating of contents;
- iii) Metrics for evaluating the impact of digital advertising, where there are any.

2 - With regard to compliance with and the integration of the criteria set out in the previous number, the specific legal frameworks for press, broadcasting, television and advertising apply.

Article 10

Registration and inspection

1 - It is incumbent upon the ERC to verify and supervise the fulfilment of the communication and transparency duties provided for in this law, as well as the duty to apply the percentage to be assigned to local and regional media in each campaign, in accordance with Article 8, paragraph 4.

2 - The payment of institutional advertising campaigns is not allowed without its expense being registered in advance in the ERC and without compliance with the provisions of article 8.

3 - The ERC shall report to the Court of Auditors cases of non-compliance with the duties referred to in paragraph 1.

Article 11

Information on state institutional advertising

1 - ERC is responsible for preparing an updated report on the award of information and advertising actions, as well as its distribution, to be made available monthly at the website of that entity, notwithstanding the provisions of the following number.

2 - It is also incumbent upon the ERC to prepare an annual evaluation report on the degree of compliance with this law, which is to be sent to parliament by the end of the first half of each calendar year.

Article 12

Transitory provision

The electronic database of information on state institutional advertising remains operational, with all applicable effects, until its form of transmission is agreed between the General Secretariat of the Cabinet Presidency and the ERC.

Article 13
Repealing regulation

The following regulations are repealed:

- a) Decree-Law no.231/2004 of 13 December;
- b) Article 2, no.2, paragraph i) of Regulatory Decree No 49/2012 of 31 August;
- c) Ordinance 1297/2010 of 21 December;
- d) Article 3, paragraph g) of Ordinance no. 58/2013, of 11 February.

Article 14
Coming into force

This law shall come into force 60 days after its publication.

Approved on 26 June 2015.

The Speaker of Parliament, *Maria da Assunção A. Esteves*.

Enacted on 10 August 2015.

Let this be duly published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 11 August 2015.

The Prime Minister, *Pedro Passos Coelho*.