



PORTUGUESE REGULATORY
AUTHORITY FOR THE MEDIA



STATUTES OF ERC

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ENTIDADE REGULADORA
PARA A COMUNICAÇÃO SOCIAL



STATUTES OF ERC

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LAW No. 53/2005
OF 8 NOVEMBER

ESTABLISHES ERC - REGULATORY ENTITY FOR THE MEDIA (*ENTIDADE REGULADORA PARA A COMUNICAÇÃO SOCIAL*), AND ABOLISHES THE HIGH AUTHORITY FOR THE MASS MEDIA (*ALTA AUTORIDADE PARA A COMUNICAÇÃO SOCIAL*).

The Assembly of the Republic, pursuant to point c) of article 161 of the Constitution, hereby decrees as follows:

Article 1
ESTABLISHMENT OF
ERC - REGULATORY
ENTITY FOR THE MEDIA

1 – ERC - Regulatory Entity for the Media (*Entidade Reguladora para a Comunicação Social*) is hereby established, and shall be subject to provisions of the Statutes approved hereby, which are deemed an integral part hereof and annexed hereto.

2 - ERC is a legal person under public law, an independent administrative body that aims to perform the tasks entrusted by the Constitution, guiding its work independently of any lines of approach on the part of political authorities.

3 - The totality of assets, rights, obligations and guarantees of the High Entity for the Media (*Alta Autoridade para a Comunicação Social*) are automatically transferred to ERC.

4 - For all due purposes and effects in law, this law shall be deemed to be a sufficient basis for evidencing the preceding paragraph, including those of registration; the appropriate departments shall thus perform all action necessary to regularise the situation, by means of a simple notice from the chairman of the regulatory board.

Article 2
ABOLISHMENT OF
THE HIGH ENTITY
FOR THE MEDIA

1 - The High Entity for the Media shall be abolished on the date the members of the regulatory board and the auditor take office.

2 – The approval of these statutes does not entail expiry of the mandates of the members of the High Entity for the Media holding office on the date of entry into force of this Law, who shall continue in that capacity until the members of the regulatory board and the auditor take office.

3 - From the entry into force of this law, references made to the High Entity for the Media in the law, regulations or contracts shall be deemed to refer to ERC.

4 – All administrative procedures which have not been completed by the date the members of the Regulatory board and the auditor take office shall be transferred to ERC, legal deadlines for taking action or decisions being suspended for a period of 60 days.

Article 3

FINAL AND TRANSITORY PROVISIONS

1 – Until a specific statutory instrument governing the financial terms of members of managing bodies of public institutions has been adopted, the remuneration of members of the regulatory board and of the auditor shall be established by joint order of the Minister of Finance and the Minister responsible for the public enterprise sector in the field of mass media.

2 – Until the respective technical, administrative and support services have been established by the regulatory board, the staff of the High Entity for the Media shall be deemed provisionally assigned to ERC.

3 – Staff assigned to the Supervision and Registration Divisions of the Institute for the Media (Instituto da Comunicação Social), identified in a list of names to be published in the II Series of the Diário da República (Official Gazette) within 30 days from the date the elected members of the regulatory board take office, shall be engaged to work for ERC under a service commission scheme.

4 – The list of names referred in the preceding paragraph shall be approved by the member of the Government responsible for the mass media sector.

5 – Until the new State Budget has entered into force or the Budget in force on the date members of the regulatory board take office has been amended, ERC shall enjoy allocations budgeted for the High Entity for the Media, already entered or yet to be entered in the State Budget.

6 – The transfer of budget allocations referred in the preceding paragraph shall take place automatically, through the respective headings of the budget of the Assembly of the Republic.

7 – The legal regime governing the organisation and operation of the Institute for the Media shall be amended by the Government, in compliance herewith, within 90 days from the entry into force of this law.

Article 4

REPEALING PROVISION

Law no. 43/98, of 6 August, is hereby repealed.

Approved on 29 September 2005.

The President-in-Office of the Assembly of the Republic, Manuel Alegre de Melo Duarte.

Promulgated on 25 October 2005.

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Counter-signed on 26 October 2005.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.

ANNEX

STATUTES OF ERC

Regulatory Entity
for the Media

CHAPTER I
GENERAL PROVISIONS

Article 1
LEGAL NATURE
AND PURPOSE

1 – ERC - Regulatory Entity for the Media, hereinafter referred to as ERC in abbreviated form, is a legal person under public law, with administrative and budgetary autonomy and its own assets, an independent administrative body that enjoys the necessary regulatory and surveillance powers.

2 – ERC aims to perform all acts necessary for pursuing tasks set out in the Constitution, in the law and in these Statutes.

Article 2
HEADQUARTERS

ERC is established in Lisbon.

Article 3
LEGAL REGIME

ERC shall operate according to provisions set out in these Statutes, to specific legal provisions, or, in the alternative, to rules that apply to public institutions.

Article 4
INDEPENDENCE

ERC shall be independent in the performance of its duties, defining freely the focus of its work, without being subject to any lines of approach from political authorities, in strict compliance with the Constitution and the law.

Article 5
PRINCIPLE OF
SPECIFICATION

1 – The legal capacity of ERC covers exclusively those rights and obligations necessary for achieving its purpose.

2 – The ERC shall not undertake activities nor use powers that fall outside its public task, nor shall it dedicate its resources for purposes other than those it is required to pursue.

Article 6
SCOPE OF
INTERVENTION

All entities that pursue mass media activities, within the jurisdiction of the Portuguese State, are subject to the surveillance and intervention of the regulatory board, namely:

- a) Press agencies;
 - b) Natural or legal persons who publish periodicals, in whichever form of distribution;
 - c) Radio and television operators, relatively to broadcasted programme services or supplied complementary content under their editorial responsibility, by any means, including electronic means;
-

d) Natural or legal persons who make publicly available radio or television programme services, through electronic communications networks, to the extent that they are empowered to decide on their selection and aggregation;

e) Natural or legal persons who make publicly available an edited coherent framework of contents, on a regular basis, through electronic communications networks.

Article 7
REGULATION
OBJECTIVES

The following regulation objectives in the field of the mass media sector shall be pursued by ERC:

a) To promote and guarantee cultural pluralism and pluralistic expression of different trends of thought, through entities pursuing mass media activities who are subject to its regulation;

b) To guarantee the free broadcasting of contents by entities pursuing mass media activities and the free access to contents by the respective addressees of the mass media content offer, in a transparent and non-discriminatory manner, so as to avoid all forms of social and economic exclusion and taking into account the need to ensure the effective allocation of scarce resources;

c) To protect more sensitive groups, such as minors, from contents or services that may compromise their development, made publicly available by entities pursuing mass media activities that are subject to its regulation;

d) To guarantee that information provided by editorial service providers complies with strict and accurate journalistic requirements and, in case of breach of applicable legal principles and rules, to ensure that service providers under its jurisdiction are publicly accountable and incur in editorial liability;

e) To protect addressees of mass media content services as consumers, as regards communications of a commercial nature or purpose distributed via electronic communications, on the part of service providers under its jurisdiction, in case of breach of laws governing advertising;

f) To ensure the protection of personal rights where they are undermined in the scope of the provision of mass media content services under its jurisdiction.

Article 8
RESPONSIBILITIES

In the field of mass media, it shall be the task of ERC:

a) To guarantee the free exercise of the right to information and the freedom of the mass media;

-
- b) To make sure that the ownership of entities pursuing mass media activities is not concentrated, so as to safeguard pluralism and diversity, without prejudice to powers granted specifically by law to the Competition Authority (Autoridade da Concorrência);
 - c) To ensure that entities pursuing mass media activities are independent from political and economic powers;
 - d) To ensure respect for rights, freedoms and guarantees;
 - e) To guarantee an actual expression and comparison of different trends of thought, with respect for the principle of pluralism and for the editorial policy of each mass media entity;
 - f) To guarantee the exercise of the right to broadcast, the right of reply and of political response;
 - g) To guarantee, in articulation with the Competition Authority, a smooth and effective operation of the press and audiovisual markets, in transparent and fair conditions;
 - h) To collaborate in the definition of sector policies and strategies to support the radio spectrum planning, without prejudice to powers conferred by law to ICP-ANACOM;
 - i) To monitor compliance of publicity campaigns of the State, the Autonomous Regions or local authorities with the constitutional principles of impartiality and exemption of the Public Administration;
 - j) To ensure compliance with rules governing mass media activities.

Article 9
CO-REGULATION AND
SELF REGULATION

ERC shall promote co-regulation mechanisms and encourage the adoption of self-regulation mechanisms by entities that pursue mass media activities and by unions, associations and other entities of the sector.

Article 10
COLLABORATION WITH
OTHER ENTITIES

- 1 – All public and private entities shall collaborate with ERC in supplying information and documents requested for pursuing assigned tasks.
- 2 – Courts shall notify the regulatory board of judgments in matters concerning the right to reply or crimes committed through the mass media, as well as in proceedings for infringement of the right to inform.

Article 11
COOPERATION OR
ASSOCIATION TIES

- 1 – ERC may establish cooperation or association ties, in the scope of its responsibilities, with other public or private entities, national or foreign, namely within the framework of the European Union, provided that this does not imply the delegation or share of its regulatory powers.

2 – ERC shall maintain coordination mechanisms with regulatory authorities for competition and for communications, and with the Institute for the Media, namely by holding regular meetings with the respective managing bodies.

Article 12
RIGHTS AND
OBLIGATIONS
EQUIVALENT TO THOSE
OF THE STATE

In the exercise of its responsibilities, ERC shall assume the rights and obligations granted to the State in applicable regulatory and legal provisions, namely with regard to:

- a) Enforced collection of fees, service revenues and other receivables;
- b) Protection of its premises and staff;
- c) Supervision of the compliance with public service obligations within the mass media sector, determination of the respective infringements and imposition of the appropriate penalties.

CHAPTER II ORGANISATIONAL STRUCTURE

Article 13
BODIES

ERC shall consist of the following bodies: the regulatory board, the executive directorate, the advisory council and the auditor.

SECTION I REGULATORY BOARD

Article 14
TASK

The regulatory board is a collegiate body responsible for defining and implementing the regulatory activity of ERC.

Article 15
COMPOSITION AND
NOMINATION

- 1 – The regulatory board comprises a chairman, a vice-chairman and three board members.
- 2 – Four members of the regulatory board shall be nominated by resolution of the Assembly of the Republic.
- 3 – The members nominated by the Assembly of the Republic shall co-opt the fifth member of the regulatory board.

Article 16
NOMINATION PROCESS

- 1 – Applications with full lists, and duly attaching the respective statements of acceptance, shall be submitted by at least 10 members of the Assembly of the Republic, and 40 members at the most,

to the President of the Assembly, not later than 10 days before the meeting set for election.

2 - The lists of candidates shall indicate a number of candidates equal to the number of post to be assumed.

3 - Up to five days before the meeting set for election, the Assembly of the Republic, namely the competent commission, will conduct a hearing with the proposed candidates, to assess the conditions required for the performance of duties.

4 - Up to two days before the meeting set for election, the President of the Assembly of the Republic shall indicate the names of all candidates, in alphabetical order, that shall be published in the Gazette of the Assembly of the Republic (Diário da Assembleia da República), yet this time limit may be extended where lists are altered following the hearing conducted by the competent commission.

5 - Ballot-papers shall include all lists, and each list shall indicate the name of all candidates, in alphabetical order.

6 - Next to each application list there shall be a printed square which is to be filled in with the choice of the voter.

7 - Each member of the Assembly of the Republic shall identify with a cross the square that corresponds to the application list of his choice, and shall not vote for more than one list, otherwise the ballot-paper shall be deemed void.

8 - Candidates of the list voted by a majority that is at least equal to two thirds of all members present and greater than an absolute majority of all the members in full exercise of their office shall be deemed elected.

9 - The list of elected candidates shall be published in the 1-A Series of the Diário da República, as a resolution of the Assembly of the Republic, no later than five days after the election of all members of the regulatory board.

Article 17
COOPTION

1 - Up to five days from the publication of the respective list in the 1-A Series of the Diário da República, nominated members shall hold a meeting, convened by the eldest member, in order to co-opt the fifth member of the regulatory board.

2 - Following a prior discussion, the nominated members shall reach a decision by consensus on the co-opted member.

3 - Where consensus is not achieved, the person receiving the highest number of votes shall be deemed to be co-opted.

4 – The cooption decision shall be published in the 1-A Series of the Diário da República no later than five days after having been taken.

Article 18
GUARANTEE OF
INDEPENDENCE AND
INCOMPATIBILITIES

1 – The members of the regulatory board shall be nominated and co-opted from among persons of an acknowledged reputation and independence as well technical and professional skills.

2 – The members of the regulatory board shall be functionally independent, and shall not be subject to any specific instructions or guidelines.

3 – Without prejudice to points d), e) and f) of paragraph 1 of article 22, the members of the regulatory board shall not be removable.

4 – Whoever holds, or held for the last two years, a post as member of executive bodies of companies, unions, confederations or business associations of the mass media sector shall not be nominated.

5 – Whoever holds, or held for the last two years, a post as member of the Government, of executive bodies of the Autonomous Regions or of local authorities shall not be nominated.

6 – The members of the regulatory board are subject to the incompatibilities and impediments of holders of high public office.

7 – During their term of office, the members of the regulatory board shall not:

a) Retain interests of a financial nature or shares in companies that pursue mass media activities;

b) Carry out any other public function or professional activity, except with regard to part-time teaching duties in higher education.

8 – The members of the regulatory board shall not hold any executive post in companies, unions, confederations or business associations of the mass media sector for a period of two years from the date of termination of service.

Article 19
TERM OF OFFICE

The term of office of the members of the regulatory board, which shall not be renewable, shall be five years, and members remain in office until their effective replacement or termination of service

Article 20
STATUS AND DUTIES

1 – The members of the regulatory board shall enjoy the status of members of managing bodies of public institutions, in all matter that are not dealt with by these statutes.

2 - The general social security regime shall apply to members of the regulatory board, except where such members are civil servants, in which case the specific regime of their post of origin shall apply.

3 - The members of the regulatory board shall perform their duties with independence, rigour and a clear awareness of their responsibility, and shall not publicly pronounce any serious judgements on the contents of approved determinations.

Article 21
TAKING OFFICE

The members of the regulatory board shall take office before the President of the Assembly of the Republic within at the most five days from the publication of the cooption decision in the 1-A Series of the Diário da República.

Article 22
TERMINATION OF OFFICE

1 - Termination of office of members of the regulatory board shall take place on the following grounds:

- a) Expiry of the period for which they were nominated;
- b) Death, permanent disability or subsequent incompatibility;
- c) Resignation;
- d) Absence from three consecutive meetings or nine interpolated meetings, unless justification is accepted by the regulatory board plenary;
- e) Removal from office, determined by resolution of the Assembly of the Republic, approved by a majority that is at least equal to two thirds of all members present and greater than an absolute majority of all the members in full exercise of their office, in case of a serious breach of statutory duties, where there is evidence that this misconduct took place in the course of the performance of duties or of the fulfilment of any obligation inherent in the post;
- f) Dismissal of the regulatory board.

2 - In case of an individual termination of office, a new member shall be nominated for a full non-renewable five year term of office.

3 - The vacant post shall be filled, where appropriate, through cooption, pursuant to article 17, or through nomination by resolution of the Assembly of the Republic, which shall be adopted within 10 days at the most, pursuant to article 16, which applies mutatis mutandis.

Article 23
DISMISSAL OF THE
REGULATORY BOARD

1 - The regulatory board shall only be dismissed by resolution of the Assembly of the Republic, approved by a majority that is at least equal to two thirds of all members present and greater than an absolute

majority of all the members in full exercise of their office, in case its operation presents serious irregularities.

2 – In case the regulatory board is dismissed, the nomination of new members shall be deemed as a matter of urgency, and new members shall take office no later than 30 days from the date of approval of the dismissal resolution.

Article 24
POWERS OF THE
REGULATORY BOARD

1 – The regulatory board shall elect a chairman and a vice-chairman from among its members, in a meeting which shall be held within five days from the publication of the cooption decision provided for in article 17, in 1-A Series of the Diário da República.

2 – The following powers are endowed on the regulatory board when pursuing their responsibilities in defining and conducting the activities of ERC:

- a) To determine the general guidelines of ERC and to monitor their implementation;
- b) To approve work programmes and budget, as well as the respective report and accounts;
- c) To approve regulations, directives and decisions, as well as other determinations assigned by law and by these Statutes;
- d) To prepare every year a report on the situation of mass media activities and on its own regulation and surveillance work, and to make it publicly available;
- e) To approve a regulation on the organisation and operation of services within ERC and the respective staff;
- f) To designate representatives of ERC before other entities;
- g) To take decisions on the establishment or closure of ERC delegations or agencies;
- h) To take all steps necessary to fulfil duties incumbent on ERC relatively to which other bodies are not competent.

3 – In the scope of its regulation and surveillance work, the regulatory board is namely endowed with the following powers:

- a) To ensure that principles and legal limits to contents broadcasted by entities pursuing mass media activities are observed, namely as regards accuracy of information and protection of personal rights, freedoms and guarantees;
- b) To ensure that principles and legal limits to advertising content are observed, in all matters for which the Consumer Institute (Instituto do Consumidor), the Commission for Imposition of Financial Penalties

in Economic and Advertising Matters (Comissão de Aplicação das Coimas em Matéria Económica e de Publicidade) or any other body referred to in the advertising legal regime are not responsible;

c) To ensure compliance with laws, regulations and technical requirements applicable within its assignments;

d) To provide a prior opinion on the purpose and conditions of tendering procedures for the award of formal qualifications for the pursue of radio and television broadcasting activities;

e) To award formal qualifications for the pursue of radio and television broadcasting activities and to make a reasoned judgement on requests for alteration of approved projects, requests for renewal of formal qualifications, or, where appropriate, the need for a new tendering procedure;

f) To apply the penal provisions provided for in the specific sector legislation, namely suspending or revoking formal qualifications for the pursue of radio and television broadcasting activities, and other penalties provided for in Laws no. 4/2001, of 23 February, and 32/2003, of 22 August;

g) To carry out the entry into records referred to in the law, being entitled for the purpose to perform audits in order to monitor and control supplied data;

h) To organize and maintain a database that enables the assessment of the compliance with the law by entities and services subject to its supervision;

i) To monitor compliance, by radio and television operators, with general and specific purposes of the respective activities, as well as obligations set out in the respective licenses or authorizations, without prejudice to powers conferred by law to ICP-ANACOM;

j) To assess and decide on complaints concerning the right of reply, the right to broadcast, and of political response;

l) To issue a prior and binding opinion on the appointment and removal from office of directors and deputy directors of mass media entities owned by the State, and other public entities responsible for the programming and information areas;

m) To issue a prior and non-binding opinion on concession contracts for the radio and television public service, as well as on the respective amendments;

n) To promote annual audits, and the respective publication in full, of concessionaries of the radio and television public service, and to monitor proper performance of concession contracts;

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- o) To participate, in articulation with the Competition Authority, in the determination of economically relevant markets of the mass media sector;
 - p) To provide opinions, under the law, on the acquisition of property or concerted practises by entities pursuing mass media activities;
 - q) To identify powers with influence on the general public, so as to protect pluralism and diversity, being entitled where appropriate to adopt the necessary measures to ensure their safeguard;
 - r) To define parameters for access and organization of electronic guides for radio and television programmes;
 - s) To specify radio and television programme services subject to “must carry” obligations on the part of companies providing electronic communications networks, under paragraph 1 of article 43 of Law no. 5/2004, of 10 February, as well as those subject to delivery obligations, without prejudice to powers held in this case by the Competition Authority and ICP-ANACOM;
 - t) To arbitrate and settle disputes that rise in the scope of mass media activities, under the law, including conflicts of interests concerning coverage and broadcast of events expected to arouse widespread interest and subject to exclusive rights, and disagreements on the right of access to public places;
 - u) To monitor and promote compliance of editorial statutes of mass media entities, as well as of natural and legal persons mentioned in points d) and e) of article 6 of these Statutes, with the corresponding legal requirements;
 - v) To assess, on request from an interested party, serious alterations in the approach or nature of mass media entities, where journalists’ conscience clause is under consideration;
 - x) To monitor the independence and impartiality of advertising campaigns pursued by the State, Autonomous regions or local authorities, including the power to order their temporary suspension, until the competent judicial authority has reached a decision;
 - z) To ensure that surveys and opinion polls are accurate and independent;
 - aa) To classify mass media entities pursuant to applicable legislation;
 - ab) To ensure that studies and other research and disclosure initiatives in the mass media and content areas are carried out, in the scope of the promotion of the freedom of speech and of the press and of the critical use of the mass media;

ac) To conduct proceedings for breaches committed through the mass media, where competence thereto is conferred by these Statutes or by any other statutory instrument, as well as to apply the respective financial penalties and accessory sanctions;

ad) To participate and speak in initiatives that involve corresponding international entities;

ae) To restrict the freedom of movement of information society services with edited contents where they seriously damage or threaten to damage any of the values protected under paragraph 1 of article 7 of Decree-Law no. 7/2004, of 7 January, without prejudice to powers conferred on ICP-ANACOM in private, business or advertising electronic communications matters.

Article 25
ADVISORY POWERS

1 – ERC shall issue opinions on all legislative initiatives concerning its scope of tasks, which must be subjected thereto by the Assembly of the Republic or by the Government, and shall be entitled, acting on its own initiative, to put forward or propose policy or legislative measures in matters within its scope of tasks.

2 – Opinions shall be deemed to be favourable if no reply is received within at the most 10 days from the date the request is received.

Article 26
CHAIRMAN OF THE
REGULATORY BOARD

1 – It shall be incumbent upon the chairman of the regulatory board:

a) To convene and chair the regulatory board and to conduct its meetings;

b) To coordinate the work of the regulatory board;

c) To convene and chair the executive directorate and to conduct its meetings;

d) To coordinate the work of the executive directorate, ensuring the directorate of the respective services and the respective financial management;

e) To determine the scope of preferential intervention of other members;

f) To represent ERC in court or out of court;

g) To guarantee the relationship between ERC and the Assembly of the Republic, the Government and other authorities.

2 – The president of the regulatory board shall be replaced by the vice-chairman or, where the latter is absent or unable to attend, by the eldest member.

3 – In urgent situations, duly justified, the chairman of the regulatory board, or whoever replaces him where he is absent or unable to attend, shall be entitled to pursue any tasks within the powers conferred on the regulatory board, which shall be submitted for ratification at the first ordinary meeting of the regulatory board.

Article 27
DELEGATION OF POWERS

1 – The regulatory board shall be entitled to delegate its powers in any of its members or in staff and agents of ERC, and shall for this purpose establish the respective limits and conditions.

2 – The chairman of the regulatory board shall be entitled to delegate the exercise of specific functions in any of the other members of the regulatory board.

3 – Determinations on the delegation of powers shall be published in the II series of the Diário da República; notwithstanding, they shall take effect from the date of approval.

Article 28
FUNCTIONING

1 – The regulatory board shall hold ordinary meetings once a week and extraordinary meetings where convened by the chairman, on his own initiative, or at the request of two other members.

2 – The regulatory board may appoint one of its officials to provide support services, who shall be responsible, among other tasks, for promoting the respective meeting notices and for drafting minutes of meetings.

3 – The regulatory board is entitled, in every particular case, to open the meetings to the public, as well as to invite any interested parties to take part in the referred meetings.

4 – Determinations that affect interested parties shall be made public in summary form, immediately after the end of the meeting, without prejudice to the need for publication or notification, where legally required.

Article 29
QUORUM

1 – Meetings and determinations of the regulatory board shall be valid only if three members are present.

2 – The regulatory board shall decide by a majority of the votes cast, being required the vote in favour of at least three members.

3 – All active members shall be present at meetings held for the following purposes:

- a) Election of the chairman or vice-chairman;
- b) Approval of binding regulations;

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- c) Award of formal qualifications for the pursue of radio and television broadcasting activities;
 - d) Approval of internal regulations concerning the organisation and operation of ERC;
 - e) Establishment of departments or services;
 - f) Approval of work programmes and budget, as well as the respective report and accounts.

Article 30

LEGAL BINDING OF ERC

1 – ERC shall be bound:

- a) By the signature of the chairman of the regulatory board or of two members, where the board has not decided otherwise;
- b) By the signature of whoever is entitled to do so, under the terms and in the context of the respective mandate.

2 – Minor administrative procedures may bear the signature of any member of the regulatory board or of ERC officials or collaborators within the scope of the powers which have been expressly delegated to them.

Article 31

EXTERNAL AND LEGAL REPRESENTATION

1 – The chairman of the regulatory board shall be responsible for the external representation of ERC, without prejudice to the possibility to delegate powers.

2 – The legal representation of ERC may be conferred on a legal attorney, by determination of the regulatory board.

**SECTION II
EXECUTIVE DIRECTORATE**

Article 32
TASK

The executive directorate is the body responsible for the organization of services and for the administrative and financial management of ERC.

Article 33
COMPOSITION

1 – The executive directorate consists of the chairman and vice-chairman of the regulatory board, ex-officio, and of the executive director.

2 – The executive director shall perform the tasks delegated by the executive directorate, and shall be employed following a determination of the regulatory board.

SECTION III
AUDITOR

Article 34
TASK

The auditor is the body responsible for monitoring the legality and effectiveness of the financial and asset management of ERC, as well as for providing advice on this field to the regulatory board.

Article 35
STATUS

1 – The auditor shall be a chartered accountant, nominated by resolution of the Assembly of the Republic, or in the alternative, by means of the procedure provided for in article 16 of these Statutes.

2 – The auditor shall take office pursuant to article 21 of these Statutes.

Article 36
RESPONSIBILITIES

It shall be incumbent upon the auditor to:

- a) Monitor and control the financial and asset management of ERC;
- b) Periodically assess the financial and economic situation of ERC and to verify compliance with standards governing its activity;
- c) Issue prior opinions within 10 days at the most on the acquisition, encumbrance, lease or disposal of immoveable property;
- d) Issue opinions on the budget and annual report and accounts of ERC;
- e) Issue opinions on any matter submitted by bodies of ERC;
- f) Inform the appropriate entities of any detected irregularities.

Article 37
TERM OF OFFICE

The term of office of the auditor, which shall not be renewable, shall be five years, and he shall remain in office until his effective replacement or termination of service.

SECTION IV
ADVISORY COUNCIL

Article 38
TASK

The advisory council is a consultative body that takes part in the definition of the general guidelines for ERC activity, contributing towards the articulation with public and private entities representing relevant interests in the context of the mass media and associated sectors.

Article 39
COMPOSITION AND
APPOINTMENT

1 – The advisory council consists of:

- a) A representative of the Competition Authority;
- b) A representative of the Institute for the Media;
- c) A representative of ICP-ANACOM;
- d) A representative of the Consumer Institute;
- e) A representative of the Institute for Cinema, Audiovisuals and Multimedia (Instituto do Cinema, Audiovisual e Multimédia);
- f) A representative of the Portuguese University Presidents Council (CRUP - Conselho de Reitores das Universidades Portuguesas);
- g) A representative of the Polytechnics Coordination Council (Conselho Coordenador dos Institutos Superiores Politécnicos);
- h) A representative of the Journalists Training Protocol Centre (CENJOR - Centro Protocolar de Formação Profissional para Jornalistas);
- i) A representative of the most representative journalists union;
- j) A representative of the most representative mass media confederation;
- m) A representative of the most representative advertising agencies association;
- n) A representative of the most representative advertisers association;
- o) A representative of the Advertising Self-discipline Civil Institute (ICAP - Instituto Civil da Autodisciplina da Publicidade);
- p) A representative of the Portuguese Association for Copy and Distribution Control (APCT - Associação Portuguesa para o Controlo de Tiragem e Circulação);
- q) A representative of the Commission for Assessment and Analysis of Means (CAEM - Comissão de Análise e Estudos de Meios).

2 – The representatives indicated above and the respective deputies shall be appointed by the competent bodies of the represented entities, for a three-year term of office, and may be replaced at any time.

3 – The name and identification of representatives and the respective deputies shall be notified to the chairman of the advisory council during the 30-day period immediately prior to the expiry of the mandate or the 30-day period immediately subsequent to the vacancy.

4 – The chairman of the regulatory board shall chair the advisory council, and is entitled to participate in meetings with a right to speak but not to vote.

5 – The participation in meetings of the advisory council does not entitle members to any direct or indirect payment, namely attendance fees, travel expenses or any other per diem payments.

Article 40 RESPONSIBILITIES

1 – It is incumbent upon the advisory council to issue non-binding opinions on the general guidelines for ERC activity or on any other matters submitted by the regulatory board.

2 – The advisory council shall provide its opinions within 30 days of the request, or, in urgent situations, within the deadline set out by the regulatory board.

Article 41 FUNCTIONING

1 – The advisory council shall hold ordinary meetings, convened by its chairman, twice a year, and extraordinary meetings on the initiative of its chairman or upon request from one third of its members.

2 – The advisory council shall be deemed active, for all purposes in this law, provided that half of its members have been appointed.

3 – A quorum of half of the active members shall be required for the operation and determination proceedings to be valid.

4 – All meeting notices and working documents shall be exclusively sent through email.

CHAPTER III SERVICES AND EXPERT COUNSEL

Article 42 SERVICES

ERC shall be provided with technical and administrative support services, established by the regulatory board according to the respective work programme and to the extent allowed by the budget.

Article 43 STAFF RULES

1 – ERC staff shall be subject to the legal regime of individual employment contracts and shall be covered by the general social security regime.

2 – ERC shall be provided with a staff establishment plan, governed by an internal regulation.

3 – ERC is entitled to be a party to a collective works agreement.

4 – The recruitment of staff shall be preceded by a public announcement, which shall be published in two major national newspapers, and shall be subject to objective selection criteria, to be established in a regulation approved by the regulatory board of ERC.

5 – Conditions for work provision and discipline shall be established by regulation of the regulatory board of ERC, in compliance with legal provisions governing the regime of individual employment contracts.

Article 44
INCOMPATIBILITIES

ERC staff shall not work or provide other paid or unpaid services to companies subject to its supervision or to other companies whose activity conflicts with powers and responsibilities of ERC.

Article 45
SURVEILLANCE TASKS

1 – ERC officials and agents, the respective representatives, as well as individuals or entities duly empowered performing surveillance tasks, when carrying out their duties and on possession of such qualifications, shall be deemed as law enforcement authorities, and shall namely enjoy the following powers:

- a) To access to premises, equipment and services of entities subject to ERC supervision and regulation;
- b) To request documents for assessment and written information;
- c) To identify individuals who infringe the law or regulations, that should be observed, so as to subsequently initiate the respective proceedings;
- d) To demand the collaboration of the proper authorities when deemed necessary for the performance of their duties.

2 - ERC employees, the respective representatives, as well as individuals or entities duly empowered performing tasks mentioned in the preceding paragraph shall be granted identification cards, the model and issuing conditions of which shall be determined by administrative rule of the member of the Government responsible for the mass media sector.

Article 46
MOBILITY

1 – Officials of the direct or indirect administration of the State, of the Autonomous Regions and of local authorities, as well as employees or managers of public or private companies, may be deployed or required to perform tasks at ERC, with guarantee of their post of origin and the respective accrued rights, the period of deployment being considered as period of service performed in the post of origin and all costs being borne by ERC.

2 – Employees of ERC are entitled to carry out duties in other entities, without prejudice to article 44, under a deployment regime, or other, pursuant to the law, with guarantee of their post of origin and the respective accrued rights, such period being considered as period of service performed in ERC.

Article 47
EXPERT COUNSEL

1 – Provided the respective budget is ensured, the regulatory board is entitled to request natural or legal persons to carry out technical researches or opinions on matters covered by powers provided for in these Statutes, under a regime of provision of services.

2 – Technical researches or opinions prepared by persons identified in the preceding paragraph shall not be binding on ERC, except where an explicit ratification is carried out by the regulatory board.

CHAPTER V FINANCIAL AND ASSET MANAGEMENT

Article 48
GENERAL RULES

1 – ERC financial and asset activity shall be governed by these Statutes, and in the alternative, by the legal regime governing public institutions.

2 – ERC financial and asset activity, including acts in connection with private administration, shall fall within the public accounting regime, shall be governed by the principles of transparency and economy, and shall guarantee compliance with the rules of Community and international law on public markets.

3 – ERC shall adopt contractual procedures in compliance with advertising, competition and non-discrimination requirements, as well as quality and economic effectiveness requirements.

4 – ERC revenue and expenditure shall be included in the annual budget, the respective appropriation being entered in a specific chapter relatively to the State's general expenses.

5 – ERC revenue and expenditure shall be included in the annual budget, and revenues in the budget of the Assembly of the Republic, in a specific heading in statements of global revenue and expenditure of autonomous services and funds, with an organic classification, shall be deemed revenues for the State Budget.

Article 49
ASSETS

1 – As from the date of its establishment, ERC assets shall consist of all property, rights and guarantees held by the High Authority for the Mass Media.

2 – ERC assets shall also consist of all property, rights and guarantees granted by law, as well as by those acquired after its establishment, in the performance of its duties.

Article 50 REVENUES

Revenues of ERC consist of:

- a) Funds from the State budget;
- b) Fees and other revenues collected from entities that pursue mass media activities, as mentioned in article 6;
- c) Fees and other revenues collected in the scope of the award of formal qualifications to radio and television operators;
- d) Proceeds of financial penalties and of costs of breach proceedings;
- e) Proceeds of periodic penalty payments applied for non-compliance with individual decisions;
- f) Proceeds of fines provided for in contracts signed with public or private entities;
- g) Any other revenues, income or values that arise from its activity or that by law or contract come to be owned by or assigned to ERC, as well as any subsidies or other forms of financial assistance;
- h) Proceeds of disposal of property of its own or of the creation of rights over such property;
- i) Interest resulting from investment schemes;
- j) Balance for the preceding year.

Article 51 FEES

1 – Incidence criteria, exemption requirements and amount of fees due for action taken by ERC shall be defined by Decree-Law, to be published within 60 days from the entry into force hereof.

2 – Fees referred in the preceding paragraph shall be established in an objective, transparent and proportionate manner.

3 – According to criteria established in this article, regulations on incidence and amount of fees due for action taken by ERC shall be defined by joint administrative rule of the Minister for Finance and the member of the Government responsible for the mass media sector.

4 – Fees due for action taken by ERC shall be borne by entities that pursue mass media activities, regardless of the broadcasting media, in proportion to necessary costs of the regulation of their activities.

5 – Fees due for action taken by ERC shall be paid every six months, in January and July, except for those that are lower than the national minimum wage, which shall be paid every year in January.

Article 52 EXPENDITURE

ERC expenditure consists of expenses undertaken in the performance of duties and powers assigned thereto, concerning costs resulting from its activity and the acquisition of fixed assets.

CHAPTER V
REGULATION AND SURVEILLANCE PROCEDURES

SECTION I
GENERAL PROVISIONS

Article 53
SURVEILLANCE

1 – ERC shall be entitled to conduct enquiries and investigations of any entity or at any location, in the pursue of powers conferred thereto, being incumbent upon mass media operators who are subject to enquiries or investigations to grant access to all means deemed necessary for the purpose.

2 – For the purpose of the preceding paragraph, ERC shall be entitled to empower individuals or entities holding special qualifications, who shall be included in a list to be published every year.

3 - Procedures laid down in the preceding paragraph shall comply with the principle of proportionality, professional secrecy and commercial secrecy.

4 – In case of suspicion of any lack of grounds to invoke commercial secrecy, the ERC must request of the competent judicial court to order procedures to be pursued.

5 – Entities that pursue mass media activities shall cooperate with ERC in the performance of its duties, and provide all information and documents requested, within 30 days at the most, without prejudice to the safeguard of professional secrecy and commercial secrecy.

6 – The obligation of cooperation may include the appearance of managers, directors and other responsible actors before the regulatory board or any other ERC services.

7 – ERC is entitled to disclose gathered information, where relevant for the regulation of the sector, provided that the disclosure of information is proportionate relatively to any rights held by operators.

8 – ERC is entitled to disclose the identity of operators subject to investigation proceedings, as well as matters under investigation.

Article 54
SECRECY

1 – Members of ERC bodies, the respective representatives, individuals or bodies duly empowered, as well as their employees and other persons at their service, regardless of the nature of the agreement, shall be required not to disclose information on facts of which they were made aware exclusively in the performance of their duties, without prejudice to paragraphs 7 and 8 of article 53.

2 – In parallel with the liability to disciplinary and civil action, breach of the professional secrecy duty provided for in the preceding paragraph shall be punishable in accordance with the Penal Code.

SECTION II

PROCEDURES FOR COMPLAINT

Article 55

**DEADLINE FOR
PRESENTATION**

Any interested person may submit a complaint regarding behaviour liable to be deemed as an infringement of rights, freedoms and guarantees, or of any legal or regulatory provisions that apply to mass media activities, provided that such complaint is submitted within 30 days of actual knowledge being gained of the facts, and that actual knowledge does not occur more than 120 days from the date the alleged infringement takes place.

Article 56

**RIGHT TO A FAIR
HEARING**

1 – The person complained against shall be notified of the contents of the complaint within at the most five days.

2 – The person complained against shall have the right to challenge the complaint within 10 days from the notification thereof.

Article 57

CONCILIATION HEARING

1 – Where the person complained against challenges the complaint, ERC shall promote a conciliation hearing between the latter and the complainant within at the most 10 days from the date of challenge.

2 – Failure to appear on the part of the complainant, of the person complained against or of any of the respective duly empowered representatives shall not imply a new conciliation hearing.

3 – The conciliation hearing shall be chaired by a member of the regulatory board or by any Law graduate appointed for the purpose by the regulatory board.

4 – In case the conciliation is successful, the terms of the agreement shall be put in writing and signed both by the complainant and the person complained against, who may be replaced for the purpose by the respective duly empowered representatives.

5 – The conciliation hearing shall be mandatory only in the course of proceedings provided for in this section, and shall not apply to proceedings relative to the right of reply, the right to broadcast, and of political response.

Article 58
DECISION DUTY

1 – The regulatory board shall issue a substantiated decision, albeit only a mere reproduction of the draft decision presented by the competent services, no later than 30 days from the date of challenge, failing which, from the last day of the respective deadline.

2 – Failure to challenge shall imply a confession of the facts alleged by the complainant, and the issue of a summary judgement by the regulatory board, with no need for a conciliation hearing.

3 – The decision of the regulatory board may be issued by reference to the agreement reached in the conciliation hearing, provided that terms agreed on are complied with in full.

SECTION III
RIGHT OF REPLY, RIGHT TO BROADCAST, AND RIGHT OF POLITICAL RESPONSE

Article 59
RIGHT OF REPLY AND
RECTIFICATION

1 – Where any entity that pursues mass media activities denies or complies poorly with the right of reply or of rectification, the interested party may apply to the regulatory board within 30 days from the date of refusal or of expiry of the deadline for fulfilment of the right.

2 – The regulatory board may request of the interested parties all data deemed necessary to provide judgement, which must be submitted within three days from the date the request is received.

3 – Entities pursuing mass media activities that deny the right of reply or of political response must preserve records of data which gave rise to the respective application until the expiry of the deadline provided for in paragraph 1 hereof, or, in case a complaint is submitted, up to the date the regulatory board issues a decision.

Article 60
GUARANTEE OF
COMPLIANCE

1 – The decision ordering the publication or broadcast of the reply or rectification, of the right to broadcast or of political response shall be complied with within the deadline established in the decision, failing which, within forty-eight hours from its notification, save where the decision relates to a non-daily publication, compliance with which shall occur in the first edition after notification takes place.

2 – Members of executive bodies of entities that pursue mass media activities, as well as editors of publications and heads of programming and information of radio and television operators shall be personally responsible for compliance with the issued decision.

SECTION IV APPOINTMENT AND REMOVAL FROM OFFICE OF DIRECTORS

Article 61 PROCEDURE

1 – Opinions referred to in point l) of paragraph 3 of article 24 hereof shall be issued within 10 days from the date the respective request is registered.

2 – Opinions which are not issued within the deadline set out in the preceding paragraph shall be deemed to be favourable, except where required preliminary inquiries demand an extension of the term.

3 – The regulatory board must issue opinions at least within 20 days.

SECTION V OTHER PROCEDURES

Article 62 REGULATIONS

1 – Regulations issued by ERC shall comply with the principles of legality, necessity, precision, participation and publicity.

2 – ERC shall publish draft regulations in its website prior to any approval or amendment of final decisions, and interested parties shall be granted a 30 day deadline to provide a non-binding opinion.

3 – The prior report of regulations shall give reasons for decisions taken, and must refer any critics or suggestions made to the draft regulation.

4 – The consultation procedure referred to in the preceding paragraph shall not apply to regulations aimed to govern exclusively the internal organization and operation of ERC services.

Article 63 DIRECTIVES AND RECOMMENDATIONS

1 – The regulatory board, of its own motion or upon an application from an interested party, is entitled to adopt general directives to promote best-practice standards in the mass media sector.

2 – The regulatory board, of its own motion or upon an application from an interested party, is entitled to issue concrete recommendations to a specific mass medium.

3 – Directives and recommendations shall not have a binding nature.

Article 64 DECISIONS

1 – The regulatory board, of its own motion or upon an application from an interested party, is entitled to adopt decisions concerning a specific entity that pursues mass media activities.

2 – Decisions shall have a binding nature, shall be notified to the respective addressees, and shall enter into force on the date set out therein, failing which, within 5 days from notification.

3 – Members of executive bodies of entities that pursue mass media activities as well as editors of publications and heads of programming and information of radio and television operators shall be personally responsible for compliance with the issued decision.

Article 65 PUBLICITY

1 – ERC regulations with external effectiveness shall be published in II Series of the Diário da República, without prejudice to a publication through other means deemed more appropriate.

2 – ERC recommendations and decisions shall be subject to a mandatory and free of charge disclosure in the mass media concerned, with an explicit identification of its origin, and not exceeding:

a) 500 words for written information;

b) 300 words for radio and television information;

3 – ERC recommendations and decisions shall be disclosed:

a) In the press, including online versions, in one of the first five pages of newspapers concerned, if the recommendation does not provide for otherwise, in an easy-to-read format generally used for information texts;

b) On radio and television, in the operator's news services with a major audience, the respective text being on television both displayed and read;

c) In publishing services provided through electronic communications networks, in a location that ensures the necessary visibility.

4 – In the daily press, radio television and services referred to in point c) of the preceding paragraph, ERC recommendations and decisions shall be disclosed within forty-eight hours from being received.

5 – In non-daily press, ERC recommendations and decisions shall be disclosed in the first edition after notification takes place.

6 – Regulations, directives, recommendations and decisions issued by ERC must be disclosed in its website.

CHAPTER VI LIABILITY

SECTION I CRIMES

Article 66 AGGRAVATED NON-COMPLIANCE

1 – Refusal to comply or a defective compliance, that aims to prevent the effects desired, with the following decisions shall amount to the offence of aggravated non-compliance:

a) Decision ordering the publication or broadcast of a reply, rectification, of the right to broadcast or of political response, within the deadline established in the decision, failing which, within forty-eight hours from its notification, save where the decision relates to a non-daily publication, compliance with which shall occur in the first edition after notification takes place;

b) Decision ordering the compliance with obligations concerning licensing and authorization to access mass media activities, provided for in the law, regulation or administrative contract;

c) Decision ordering the rectification of a survey or opinion poll, pursuant to article 14 of Law no. 10/2000, of 21 June.

2 - The offence of aggravated non-compliance shall be punishable pursuant to article 348 of the Penal Code.

SECTION II ADMINISTRATIVE OFFENCES

Article 67 SANCTIONING PROCEDURES

1 – It is incumbent upon ERC to prosecute and punish breaches provided for in these Statutes, as well as those assigned thereto by any other statutory instrument, in matters concerning the mass media.

2 – Sanctioning procedures shall be governed by the regime of administrative offences and, in the alternative, by provisions of the Penal Procedure Code.

3 – It is also incumbent upon the ERC to inform the competent authorities of any penal infringements it is aware of in the performance of its duties.

Article 68 REFUSAL TO COOPERATE

Failure to comply with paragraphs 5 and 6 of article 53 of these Statutes shall be deemed to constitute breach liable to a financial penalty from

€5000 to €25000, where the offence is committed by a natural person and from €50000 to €250000, where the offence is committed by a legal person.

Article 69
REFUSAL OF ACCESS
FOR THE PURPOSE
OF ENQUIRIES AND
INVESTIGATIONS

The refusal of access to an entity or location for the purpose of conducting enquiries or investigations, pursuant to paragraph 1of article 53 of these Statutes, shall be deemed to constitute breach liable to a financial penalty from €5000 to €25000, where the offence is committed by a natural person and from €50000 to €250000, where the offence is committed by a legal person.

Article 70
FAILURE TO PRESERVE
RECORDS

1 – Failure to comply with paragraph 3 of article 59 of these Statutes shall be deemed to constitute breach liable to a financial penalty from €5000 to €50000.

2 - Negligence shall be punishable.

Article 71
REFUSAL TO COMPLY OR
DEFECTIVE COMPLIANCE

Refusal to comply or defective compliance, that aims to prevent the desired effects, with the following decisions shall be deemed to constitute breach liable to a financial penalty from €5000 to €25000, where the offence is committed by a natural person and from €50000 to €250000, where the offence is committed by a legal person:

a) Decision ordering the publication or broadcast of a reply, rectification, of the right to broadcast or of political response, within the deadline established in the decision, failing which, within forty-eight hours from its notification, save where the decision relates to a non-daily publication, compliance with which shall occur in the first edition after notification takes place;

b) Decision ordering the compliance with obligations concerning licensing and authorization to access mass media activities, provided for in the law, regulation or administrative contract;

c) Decision ordering the rectification of a survey or opinion poll, pursuant to article 14 of Law no. 10/2000, of 21 June.

SECTION III

PERIODIC PENALTY PAYMENT

Article 72
PERIODIC PENALTY
PAYMENT

1 – Addressees of specific decisions issued by ERC shall be subject to pay a periodic penalty payment for each day of delay in complying with such decisions, as from their date of entry into force.

2 – The daily amount provided for in the preceding paragraph shall be €100, where the offence is committed by a natural person, and €500, where the offence is committed by a legal person.

CHAPTER VII

PARLIAMENTARY MONITORING AND JUDICIAL CONTROL

Article 73

REPORT TO THE
ASSEMBLY OF THE
REPUBLIC AND
PARLIAMENTARY
HEARINGS

1 – ERC must inform the Assembly of the Republic of its determinations and activities, by sending every month a collection thereof.

2 – ERC shall submit to the Assembly of the Republic an annual report on its regulation activities, as well as the respective report and accounts, up to 31 March each year, for a debate, preceded of a hearing of members of the regulatory board, in the Commission for Constitutional Affairs, Rights, Freedoms and Guarantees (Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias).

3 – The commission debate shall take place within 30 days from receiving the report and accounts.

4 – The members of the regulatory board shall appear before the competent commission of the Assembly of the Republic, to provide on request information or clarifications on their work.

Article 74

LEGAL RESPONSIBILITY

Members of ERC bodies, their employees and agents shall be subject to civil, criminal, disciplinary and financial liability for actions and omissions in the performance of their duties, pursuant to the Constitution and other applicable legislation.

Article 75

JUDICIAL CONTROL

1 – The activity of ERC bodies and agents is subject to administrative jurisdiction, in the terms and limits explicitly provided for in the Statutes of the Administrative and Financial Courts.

2 – Sanction applied to administrative offences may be challenged before the competent judicial courts.

3 – Decisions issued in the scope of dispute settlement may be appealed to judicial or arbitral courts, under the law.

4 – Administrative proceedings initiated to challenge a decision issued by ERC or appeals brought before judicial or arbitral courts shall not suspend the effects of the challenged or appealed decision, except where the corresponding preventive action is ordered.

Article 76

CONTROL BY THE COURT OF AUDITORS

1 – ERC is subject to the jurisdiction of the Court of Auditors.

2 – Action taken and contracts signed by ERC shall not be subject to control by the Court of Auditors; notwithstanding, annual accounts shall be submitted thereto for judgement purposes.

Article 77

WEBSITE

1 – It is incumbent upon ERC to make available a website with all relevant data, namely the statutory instrument of establishment, Statutes, regulations, decisions and guidelines, as well as membership of its managing bodies, plans, budgets, reports and accounts for the two previous years of activity, and also all determinations that do not concern its day-to-day management.

2 – The website shall serve as a medium for displaying models and forms for submitting online applications, aiming to meet the respective information requests and to provide them online, as legally appropriate.

3 – Contents of court judgements notified to ERC, pursuant to paragraph 2 of article 10 of these Statutes, shall be published in ERC's website.

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