



TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY (TMT)

CHANGES TO THE RULES ON AUDIOTEXT AND PREMIUM RATE SERVICES

Decree-Law 8/2013 of 18 January makes the fourth amendment to Decree-Law 177/99 of 21 May and it is essentially designed to bring the rules it establishes into line with those of Directive 2006/123/EC, of the European Parliament and of the Council of 12 December 2006, on services in the internal market.

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In fact, Directive 2006/123/EC made significant amendments to the legal rules on the establishment of service providers in the Member States, with the objective of encouraging the exercise of the right to freedom of establishment and freedom of movement of services, without neglecting maintenance of quality levels.

Therefore, the legislation that transposes this Directive – Decree-Law 92/2010 of 26 July – establishes principles and rules to simplify freedom to access and carry on services activities in Portugal.

It is precisely in this context that the new Decree-Law 8/2013 brings in the amendments required by Decree-Law 92/2010 in respect of the specific area of the requirements for access to the activities of provider of audiotext services and provider of premium rate services based on message sending, amending Decree-Law 177/99 of 21 May, in the version in force.

MAIN CHANGES:

■ Registration

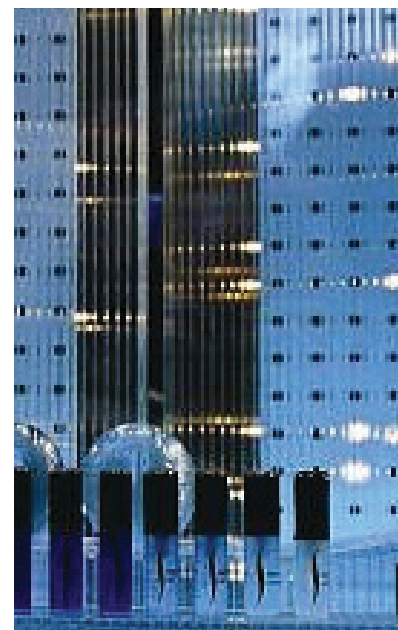
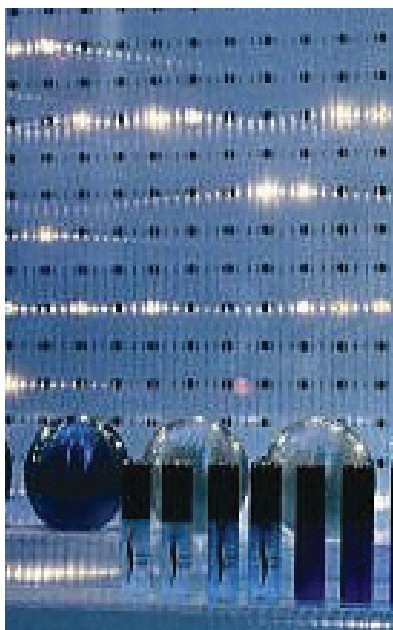
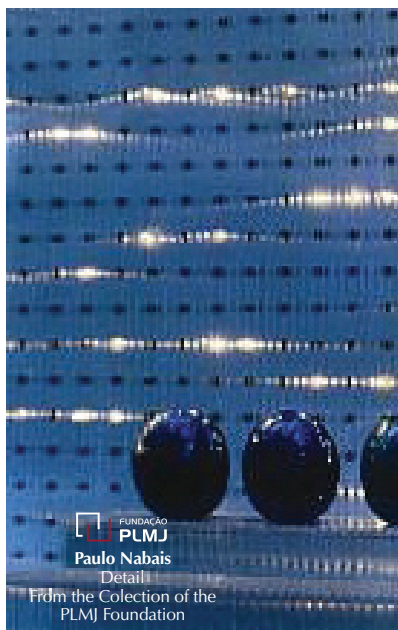
Individuals or companies that wish to carry on one of the said activities of provision of services covered by these rules must register at the ICP – National Communications Authority (ICP-ANACOM), and any individual with their activity registered with the tax authorities or any legally incorporated company may now register.

As to the registration process itself, the formalities have been greatly simplified and now all that is necessary is to present an application accompanied by a simple copy of the identification document and proof of registration of start of activities in the case of an individual, or with a simple form extract of the content of the information currently registered at the commercial registry or the access code for the respective permanent certificate in the case of a company. In either situation, it is necessary to provide the name, address and other contacts of the service provider.

The cases in which registration is prohibited have been widened under the new rules. Besides the situations already established, registration is prohibited in the case of (i) individuals who have been owners or held positions on the corporate bodies of companies for which the registration has been suspended or revoked and (ii) companies with owners who now hold or, in the past, have been in this position in other companies

CHANGES TO THE RULES ON AUDIOTEXT AND PREMIUM RATE SERVICES

March 2013



for which the registration has been suspended or revoked.

The new legislation expressly establishes a period of 10 days from the date of filing of the above items at the end of which, if a decision has not been made, the registration application is tacitly approved.

It is no longer necessary to register entities legally established in a European Union or European Economic Area Member State for the provision of audiotext or premium rate services based on message sending that wish to carry on this activity in Portugal, either on a permanent basis by establishing here, or on an occasional or sporadic basis, under the free provision regime. They are, however, subject to the conditions for carrying on the activity that are applicable to them.

The only requirement applicable to providers of premium rate services based on message sending to Portugal, but not established here, is to obtain a specific access code to be attributed by ICP-ANACOM.

■ Information to be provided to ICP-ANACOM and to the consumer:

The obligation to give prior notice to ICP-ANACOM whenever an entity intends to carry on the activity of provision of

audiotext or premium rate services by message sending remains. That prior notice obligation now only applies to entities that intend to carry on their activity in Portugal.

At the same time, this obligation to provide information is simplified in that it is now simply a question of communicating it with an indication of the name, address and other contacts of the service provider and accompanied by the general conditions for provision of the services in question.

The most demanding obligation – the need to present to ICP-ANACOM a declaration with detailed description of the service to be provided, the technical specification indicating the equipment to be used and an indication of the support services provider – is now only necessary for the attribution of access codes.

The said prior communication to ICP-ANACOM of the provision of the services that are planned to be started, the application for attribution of access codes and the request for registration to which reference is made above may be presented (all three if that is the case) simultaneously.

At the same time, as to the information to be provided to the consumer, ICP-ANACOM makes a list of audiotext/

added value service providers operating in Portugal available on its website. The information presented on the site includes the contact details for these providers, a description of the services provided and the general conditions for the provision of the service.

■ Relations with support service providers

The matters relating to the rights and obligations of providers and to the relations between audiotext/added value service providers and providers of support services remain, essentially, identical. However, it is stated that the rule regarding the relations with the providers of support services is only applicable to the agreements governed by Portuguese law.

■ Attribution and use of access codes

Service providers established in another Member State of the European Union or the European Economic Area are expressly allowed to carry on the activity of providing audiotext/added value services based on message sending in Portugal, with recourse to access codes belonging to the numbering plans of the State where they are established. It is, however, necessary that such service providers comply with the requirements

CHANGES TO THE RULES ON AUDIOTEXT AND PREMIUM RATE SERVICES

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established in Decree-Law 177/99 in respect of pricing information for audiotext services and the conditions for providing added value services based on message sending, in both cases in Portuguese. Alternatively, in the case of providers of added value services based on message sending to Portugal but which are not established in this country, the same must comply with the requirements for making information permanently available to the consumer as set out in article 10 of Decree-Law 7/2004 of 7 January.

It is also established that the attribution of access codes must take place within 15 days of receipt by ICP-ANACOM of the application for that purpose. At the end of that period the applicant may have recourse to the administrative courts in order to obtain a judgment against ICP-ANACOM for failure to act properly.

■ Taxes

As far as taxes are concerned, they are dependent on the act in question rather than on the taxable person. However, service providers not established in Portugal are exempt from payment of the additional annual tax.

■ Supervision

The powers of monitoring whether or not the services provided with the access codes attributed comply with the applicable rules and the powers of cancelling the use of such codes remain with ICP-ANACOM.

■ Sanctions

Decree-Law 8/2013 also aimed to bring the system of sanctions provided for in Decree-Law 177/99 into line with the framework for offences in the communications sector approved by Law 99/2009 of 4 September, in the version currently in force.

The previous system only provided for fines to be set at values between EUR 2493.99 and EUR 24 939.90 or EUR 14 963.90 and EUR 49 879.80 according to whether, respectively, the case related to an individual or a company, for the set of infringements that amounted to

administrative offences. However, the changes introduced by Decree-Law 8/2013 now classify the different types of infringements as minor, serious and very serious administrative offences and these changes also define the amounts of the financial penalties not only in accordance with the seriousness of the offence but also in accordance with whether the infringer is an individual or a micro, small, medium or large company.

Decree-Law 8/2013 also added new provisions to the rules under Decree-Law 177/99 in order to bring it into line with the above-mentioned Decree-Law 92/2010. The new provisions establish that all notifications, communications, documentation, applications or information must be done electronically through of a single electronic access point for services.

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