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# Update

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## The New Electronic Communications Law

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On August 16, 2022, Law no. 16/2022<sup>i</sup> was published, approving the New Electronic Communications Law ("New ECL"), which transposes into the Portuguese legal system the European Electronic Communications Code ("EECC"), established by Directive (EU) 2018/1972, as well as Directive 98/84/EC, on the legal protection of services based on, or consisting of, conditional access, and Directive 2002/77/EC, on competition in the markets for electronic communications networks and services.

The New ECL enters into force today, November 14, 2022 (90 days after its publication)<sup>ii</sup>, revoking and consequently replacing the previous ECL, which was approved by Law 5/2004, of February 10 ("ECL").

The New LCE further amends the following legal instruments:

- Law no. 41/2004, of August 18, concerning the protection of personal data and privacy in telecommunications;
- Law no. 99/2009, of September 4, which approves the framework regime of administrative offences in the Communications sector;
- Decree-Law no. 151-A/2000, of July 20, which establishes the applicable regime for the licensing of radiocommunications networks and stations and for the supervision of the installation of said stations and the use of the radioelectric spectrum, as well as the definition of the principles applicable to radioelectric rates, to the protection of exposure to electromagnetic radiation and to the sharing of radio infrastructures;
- Decree-Law no. 24/2014, of February 14, which transposed Directive no. 2011/83/EU, of 25 October 2011, on consumer rights.

It also revokes Ordinance no. 791/98, of September 22, which sets out the technical standards that must be complied with for the installation and operation of the cable distribution network, as defined in Decree-Law 241/97, of 18 September.

As it is practice in the Portuguese legal system, the New ECL closely follows the wording of the European Electronic Communications Code which, replacing the European rules that have regulated the digital single market since 2002, now aims to standardise, modernise, and consolidate this market.

To this end, the New ECL introduces relevant changes in the electronic communications sector, among which the following should be highlighted:

- The broadening of the concept of “electronic communications services”, which now encompasses entities which provide internet access services and number-based or number-independent interpersonal communications;
- The focus on the implementation and geographical expansion of access to very high capacity networks;
- The review of the radio spectrum management regime;
- The extension of the powers of the national regulatory authority (“ANACOM”), although counterbalanced by the strengthening of its duty of cooperation with other entities and competent authorities, as well as the extension of the European Commission's veto power over its decisions, namely in the scope of market analysis and the measures that may be implemented thereafter;
- The special reinforcement of security in communication and of end-users' rights.

Many of the provisions of the New ECL now depend on ANACOM's regulatory activity, amending existing regulations, as well as approving new regulations, in order to implement them. Until then, existing regulations and other instruments remain in force, insofar as they are not incompatible with the provisions of the New ECL.

ANACOM has already set in motion some of the procedures aimed at implementing the New ECL. Specifically, it has placed its “Multi-Annual Activity Plan 2023-2025: objectives and strategic actions” under public consultation on 02.08.2022, in which, within the scope of the strategic actions prescribed for the up-coming three years, it provides for the adoption of regulatory measures to implement the New ECL, particularly, with regard to the protection of end-users' rights.

Furthermore, on 14.09.2022, ANACOM launched the public consultation on the national strategic plan for the radium spectrum, which establishes the strategic criteria and principles of the radio spectrum. On 26.10.2022, at the request of the Portuguese Government, it promoted a public consultation on the implementation of very high capacity public electronic communications networks in the so-called

"white areas" (i.e. geographical areas where such networks are not currently available), aimed at holding a public tender for the geographical expansion of such networks in those areas.

Finally, it should be noted that, although the New ECL has now entered into force, its application in time is not uniform, thus contributing to the legal uncertainty that the practical application of this new law, endowed with considerable complexity, will bring. For example, it is unclear under which terms the New ECL, namely as regards end-user rights, will apply to electronic communications service provision contracts already entered into.

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<sup>i</sup> Rectified on 12 October by Declaration no. 25/2022, to correct inaccuracies in cross-references.

<sup>ii</sup> In their entirety, with the exception of articles 59, 62(3, 4, 5, 6 and 7), 65, 177, 178(3)(q), 179, 180, 181, 182 and 183, which entered into force on the day following its publication.