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# TMT 2022

Portugal: Trends & Developments  
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## Trends and Developments

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### COVID-19: Impact, Consequences and Resilience

Despite the optimistic forecast for 2021, which was expected to be a year of economic recovery in a (hopefully) post COVID-19 world, we are still faced with the hard reality that, regardless of a hesitant partial return to a sort of “normal” life during the warmer months – with some recovery of international travel and associated tourism, as well as retail consumption – the fight against COVID-19 remains the primary focus of both governments and of society as whole.

Even given widespread vaccination across Europe – in which regard Portugal has had impressive results, due to a huge logistic effort by the government, aided by the military and with the overwhelming acceptance of the population – due to the appearance of new virus variants and the colder months in the northern hemisphere, it seems that 2022, or at least the first half of it, will still be mostly focused on managing the pandemic and finding the necessary public resources to do so, with the possibility of going back to restrictions or even partial lockdowns.

If it was already clear that the pandemic produced profound changes in the economy and in society, this is even more clear following 2021, when good recovery indicators turned into new restrictive measures and the general public acquired new consumer and work habits (confirmed by supportive private practices and legislative measures), once again confirming the need and the continuity of online sales alternatives, the continuous reinforcement of network

capacity and in business investment in the digitalisation of operations.

It is worth noting that the public sector and companies are now turning to 2019 compliance targets, that were put on hold for the past two years, and are rethinking their policies and procedures. As for the TMT sector, generally it has had the opportunity to assess market gaps and new business opportunities for expansion into areas that were clearly not ready for long periods of confinement and preferential remote working.

The last two years have provided a huge boost for technological development. There has been a constant challenge to the reliability of communications networks, as well as the dematerialisation of retail outlets resulting in a digitalisation of business with the proliferation of, for example, digital ordering and delivery systems in the food sector and other retail business, which is now largely widespread as a consumer habit in the majority of the urban population.

All this calls for digitalisation, which has now coincided with a period of revolution in the Portuguese communications paradigm with the introduction of the fifth generation of mobile services (5G) in communications networks. If the last years have taught us something, it is that technology can provide possible solutions to help adapt society to the new reality, bringing new business and investments opportunities.

On a different note, it is relevant to mention that, due to the veto by the national Parliament of the annual state budget for 2022 in late November

2021, which led to a political crisis triggering the fall of the government and the convening of early elections scheduled for late January, it is expected that legislative work, as well as implementation of government policies, will only be fully resumed by the second quarter of 2022, when the new government will be fully in office.

## **5G Implementation**

After a long and heavily criticised auction process that started on 14 January 2021 – preceded by an even more difficult preparation process, heavily delayed during 2020 due to the lockdown and suspension of non-essential public services for most part of that year, as well as ongoing litigation between the mobile service network operators in the Portuguese market and ANACOM, the Portuguese Regulator of electronic communications and postal services – the auction process finally ended by October 2021.

Criticism from consolidated operators in the Portuguese market (dominated by three major companies) such as MEO, which challenged in court ANACOM's proposals and rules with few results, was based on an alleged constant change of rules by ANACOM, with the purpose of favouring the entry of new operators in the market and thus increasing competition in the mobile segment. Even if there are challenges after the end of the auction, on which no information is currently available, this will not condition the immediate advance of the commercialisation.

In any case, the spectrum bands were attributed, earning the Portuguese state a total amount of EUR566.8 million in the two bidding phases, with six companies acquiring the spectrum lots made available. It is interesting to note that, unlike what happened with the 2011 spectrum allocation for 4G, where TMN (today MEO), Vodafone and Optimus (today NOS) monopolised the spectrum, we now have three new companies entering the market with significant stakes – Dense Air

(40MHz), Dixarobil (95MHz) and NOWO (70MHz) – apart from the three companies already consolidated in the market: MEO (104MHz), Vodafone (110MHz) and NOS (134MHz).

Thus, there are now six companies with licences to use frequencies for 5G development, which represents a significant change in the market with the entry of new players, which will undoubtedly bring important consequences and business opportunities.

The closing of the auction was an important step in the implementation of this technology, and all companies licensed to use the 5G spectrum have already been issued the Right to Use Frequencies (DUF, “*Direito de Utilização de Frequências*”) and are now authorised to begin commercial operation of this technology. This is expected to occur soon, with Vodafone already providing 5G services on a trial basis until the end of January 2022.

Additionally, there is a strong demand by consumers and widespread sale of devices ready for 5G connection, backed with a wave of advertising, as well as several information campaigns on the future possibilities and technological impacts.

Throughout 2021, there was also a recurrent demand for land plots that could be used to site telecommunications towers. With more companies operating in the scope of 5G, this demand is expected to continue, given the need to increase geographic coverage.

In addition, during December 2021, ANACOM has been consulting the market on possible interest in the 26GHz frequency band, which, not being part of the spectrum bands auctioned, has several applications distinct from the others, as it has a higher data transmission capacity. The leasing of such a frequency will be paramount,

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especially for telecom operators, and we can expect interesting opportunities and developments in this field.

In the medium term, it will be possible to see the implementation of new commercial models that will give rise to new clients and revenue streams from sectors such as agriculture, transport and health. It is also expected that the introduction of AI solutions will reach the telecommunications sector, supported by a fast and high-capacity system such as 5G.

## **Development of the Telecommunications Market in Portugal**

Some interesting conclusions on the state of the telecommunications market in Portugal can be drawn from the increase in the contracting of optic fibre services, where eight out of every ten new customers choose optic fibre. Residential customers of high-speed services at a fixed location reached 3.2 million by the end of the third quarter of 2021, 8.6% more than in the same period of 2020. Also, at a national level we have witnessed a generalised growth in subscriptions to high-speed services, with an estimated 5.9 million homes wired with high-speed networks by December 2021. We note a predominance of FTTH “fibre to the home” versus HFC “hybrid fibre coaxial”.

Another relevant point is the continued growth in the subscription to package services, in part due to the marketing strategies employed by economic agents, but with impressive numbers: by December 2021, 90 out of every 100 households had subscribed to some type of package. In this, field MEO leads in the share of revenue from bundled services, followed by NOS, Vodafone and NOWO.

## **Sub-allocation of E.164 Numbers from the National Numbering Plan**

With the approval of the Regulation on the sub-assignment of E.164 numbers from the National Numbering Plan, electronic communication companies that intend to develop new business models will be able to sub-assign numbers attributed from the National Numbering Plan. The Regulation aims at defining the rules applicable to the sub-assignment as requested by companies without resulting in the imposition of a new obligation on companies holding rights of use of numbers assigned by ANACOM, in accordance with European practice. This means that companies offering electronic communications services will now be able to sub-allocate numbers from the National Numbering Plan assigned to them to other companies, which can then make the subsequent allocation to the end user, increasing consumer choice and allowing entrance of new players into the market.

## **Industrial Development**

Technological development needs industrial follow-up, but the semiconductor industry is suffering from the effects of the pandemic, and this will most likely extend to 2022, even if perhaps it is not as severe as the 2020–21 shortage, as some production lines are already recovering the usual activity and stocks. This lack of supply is a natural consequence not only of the pandemic (with the closing of non-essential production lines and redirecting the available resources to essential VMOs), but also of the substantial increase in demand without a corresponding increase in supply.

This lack of supply in chip production is an excellent business opportunity for investment, with records already being broken in venture capital investments in semiconductor companies.

### **Personal Data Protection and the Role of the CNPD**

The Portuguese Data Protection Authority (*Comissão Nacional de Proteção de Dados*, CNPD) has long been seen as a somewhat neglected authority in terms of funding and available resources, limited to a narrower range of action, tending to operate by complaint and more focused on the protection of personal data in the labour context.

However, recently we have been witnessing a heightening of its activity, namely by the issuance of opinions and participation in major processes, such as the one before the European Committee that applied an aggravated fine to WhatsApp for changing its privacy policy and, in July 2021, the prosecution of the municipality of Lisbon for the transmission of personal data of promoters of demonstrations to third entities.

CNPD has adopted a very restrictive position regarding the proposals submitted by security forces for new means of surveillance using drone cameras. It has also vehemently opposed the draft law (Draft Law No 111/XIV/2.<sup>a</sup>) on updating the standards of surveillance, as it considers substantially extending the regime currently in force by combining a multiplicity of means of image collection (particularly through drones, bodycams or even by real-time access to video-surveillance systems) operated by private entities with the possibility to convert images into biometric templates, without any limitation and guarantees of non-discrimination, enabling the monitoring of movements of specific citizens through facial recognition without defining purposes and other required criteria.

Regarding the use of cookies, we can expect further developments and guidelines from CNPD, so that organisations can align their practices with legal requirements. Moreover, it is currently carrying out a general survey on how public enti-

ties are using certain online services and tools, focusing on the processing of personal data, including the use of cookies and widgets, with a view to a coherent and global intervention for the entire public administration.

### **Data Governance Act and Results of the Public Consultation on Fair Data Economy**

The year 2022 is likely to see fruitful legislative work in the areas of data protection and the regulation of data transfers. Highlighting the political agreement on European Data Spaces and the building of what is intended to be, in the words of Margrethe Vestager (Executive Vice-President for A Europe Fit for the Digital Age), “*a first building block for establishing a solid and fair data-driven economy*”.

The consultation ran from 3 June to 3 September 2021 and looked at proposals to create fairness in data sharing, value for consumers and businesses. This survey is one of the preparatory acts that will accompany the regulatory review of the Directive on the legal protection of databases and the Data Act. The responses were clear that action at EU or national level on data sharing between companies and governments is considered necessary in the public interest, especially for emergency and crisis management, removing obstacles to data transmission in these circumstances.

The main intent of the Data Act will be to clarify for EU consumers and businesses who can use and access what data and for what purposes. The correct legislative adequacy to an increasingly transversal practice, and one where the risk of improper access to data is increasing, is very important to ensure that the digital transition and growth is made in the most fair and transparent way. These revisions, along with other legislation, could be significant in 2022.

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## **Santa Maria, Azores Spaceport**

To take advantage of the strategic geographical location of the island of Santa Maria in the Azores, Portugal has begun to draw up plans for the creation of a spaceport. The allocation of the project encountered obstacles in 2020 and 2021 and was not awarded due to the exclusion of competitors. However, on the initiative of the Azores regional government, the project will be reviewed and is expected to progress in the near future.

The Portuguese Space Agency addressed the 13th European Space Conference on the lack of average space capacity in the EU and how a spaceport in the Azores could be essential to meet this objective and move towards European progress in space exploration.

This is excellent news for tech and other businesses, with great opportunities arising both in the development of the port infrastructure as well as the possibilities brought by NewSpace to the technological sector and product development in Portugal. The ease and reduced cost of launching microstats or cube satellites (satellites with 1m<sup>3</sup> launched in bulk) allow an increase in microgravity testing on various products, which will be an advantage for Portuguese companies wishing to test their products, as well as for other companies adapting their business model to facilitate this space demand. It also represents an interesting business opportunity, and we can expect demanding legal challenges.

## **Transposition of the European Electronic Communications Code**

The year 2021 should have been the one that Portugal finally began to apply the European Electronic Communications Code – ECC (approved by Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018, already amended), but this has not been the case. Thus, Portugal has now received two

notices from Brussels urging the transposition of the Directive. Consequently, it is very likely that 2022 will be a year of developments.

The draft legislation (Proposal of Law 83/XIV/2) submitted by the government was the subject of several hearings by representatives of CNPD, ANACOM, the National Security Office and the National Centre for Cybersecurity, among others, and is undergoing intense discussion. However, due to the dissolution of Parliament and the current political situation, we do not expect this legislative proceeding to be concluded before the second half of 2022.

## **Changes in Consumer Law – Implementing Directives 2019/771 and 2019/770**

In 2021, there were significant changes regarding consumer protection in Portugal, finally bringing Portuguese law closer to European law and the general practice.

Coming into force on 1 January 2022, Decree Law No 84/2021 of 18 October 2021 (transposing EU Directive 2019/771 and Directive (EU) 2019/770), is intended to strengthen consumer rights. In addition to the obvious intention to adapt the general principle of the need for conformity of digital goods (or services) with the contract to the digital dimension of the market and ensure a high level of consumer protection in the digital environment, several relevant changes in terms of consumer protection stand out, namely:

- the broadening of the concept of “good”, including the concept for digital content and services;
- changes in the legal guarantee periods for movable and immovable goods/real estate;
- the regulation of commercial guarantees (the former voluntary guarantees);
- the consolidation of the concept of conformity of goods with the contract;

- strengthening of the consumer rights in the event of lack of conformity of the goods and the establishment of preference thresholds in the exercise of such rights; and
- implementing the joint and several liability of the online marketplace service provider (online platforms/marketplaces) towards the consumer.

The new rules apply to all new contracts or, in the preceding continuing service contracts, to the instalments/effects produced after this date. The new law is a real game-changer in the supply of goods, services and digital content and brings a general need for adaptation from the retail sellers acting in Portugal, calling for changes in the sales policies and practices of many sellers in both traditional and online commerce, as well as in the capacity of response, along with their collaborators, to consumer complaints. Hence, some activity is expected to take place in this review of sales models and policies.

## **Harmonised Rules on Artificial Intelligence (AI)**

The proliferation of AI will reach all sectors sooner or later and will provoke genuine administrative reforms. The anticipation with which business models are adapted will be fundamental in defining medium-term strategies. Whether in self-driving cars or in simpler electronic mechanisms, AI is coming and will revolutionise our reality. The next year should bring some advances both technologically and legislatively, with the discussion of the proposal presented by the European Commission.

The Artificial Intelligence Act (Regulation laying down harmonised rules on artificial intelligence) as proposed by the European Commis-

sion intends to establish a threshold of safety regarding AI applications and ensure fundamental rights protection.

Legislative progress in this field will further allow the development of these applications, which have infinite possibilities. The presented proposal focuses, for example, on the prohibition of unacceptable AI practices – banning systems that can manipulate individuals by exploiting personal or otherwise private data – the definition of high-risk systems, transparency and compliance obligations, as well as the creation of national supervisory authorities for AI systems.

## **Conclusion**

It is unquestionable that the pandemic has changed the world – the way we relate with others, how we work, how we do business and how we shop, and has had a serious impact on the legal and regulatory framework, which will continue in the years to come.

A common thread runs through all the above topics: technological development requires legal and economic support, and TMT legal action development is living proof of this. The real issue is how we react to change – and in all contexts we have seen a willingness to step forward and to overcome the challenges.

Opportunities and challenges arise at every corner. A keen eye and ambition allows us to seize these new opportunities, maintaining the high levels of compliance required by various regulators. As far as the legal environment is concerned, the challenges are also increasing, with major legislative efforts to regulate new technological developments.

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## AUTHORS



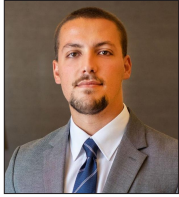
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