

## Privacy in Portugal: overview

Helena Tapp Barroso, João Alfredo Afonso and Tiago Félix da Costa  
Morais Leitão, Galvão Teles, Soares da Silva & Associados – Sociedade de Advogados

[global.practicallaw.com/3-575-3205](http://global.practicallaw.com/3-575-3205)

### LEGISLATION

#### 1. What national laws (if any) regulate the right to respect for private and family life and freedom of expression?

Respect for private and family life and freedom of expression are protected by the Portuguese Constitution (*Article 37 addressing freedom of expression and information; Article 34 containing guarantees on the inviolability of home and correspondence*).

The fundamental principles and guarantees on personal data protection are set out in the:

- Constitution (*Article 35 on the use of computerised data*).
- Strasbourg Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data 1981 (Strasbourg Data Processing Convention).
- European Convention for the Protection of Human Rights (ECHR) (*Articles 8 and 10*).
- Charter of Fundamental Rights of the European Union (*Articles 7 and 8*).
- Law 67/98 of 26 October (Data Protection Act), which implemented Directive 95/46/EC on data protection (Data Protection Directive).
- From 25 May 2018, Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).
- Additional legislation pursuant to the General Data Protection Regulation is also expected as a Working Committee was appointed in late August 2017 draft and present by the end of the year preliminary versions for discussion.

#### 2. Who can commence proceedings to protect privacy?

Proceedings can be commenced by the National Commission for the Protection of Data (*Comissão Nacional de Protecção de Dados*) (CNPD). Data subjects can also commence proceedings themselves to protect privacy.

#### 3. What privacy rights are granted and imposed?

The Data Protection Act grants individuals with a number of rights regarding their data. These include:

- The right of information and access to the data.
- The right to correct inaccurate data.

- The right to object to particular kinds of data processing.
- The right to request deletion of the data.

Upon collecting personal data directly from same subjects or at any time before collection, data controllers must provide data subjects with clear information on (among other things):

- The data controller's identity.
- The intended processing purposes.
- The categories of information recipients.
- An indication as to whether data may circulate on the network without security measures and may be at risk of being seen or used by unauthorised third parties.
- Whether the data collection is made on an open network.
- The data subject's rights of access to data and correction.

Individuals are granted the right to access their personal information held by data controllers and controllers must not be subject to restrictions, excessive delay or expense by the controller.

Data subjects are also entitled to obtain deletion of their data if the information is incomplete or inaccurate, or when the processing of the data is performed according to terms that are not compatible with the legitimate grounds and purposes of the data controller.

#### 4. What is the jurisdictional scope of the privacy law rules?

The jurisdictional scope of the Data Protection Act (DPA) covers the processing of personal data carried out by entities located in Portugal or where Portuguese law applies by virtue of international public law.

The provisions of the DPA also apply to the processing of personal data carried out by entities established outside the EU that use a means of automated or non-automated processing located in Portugal (except in cases where such equipment, although located in Portugal, serves only for mere data transit purposes)

#### 5. What remedies are available to redress the infringement of those privacy rights?

##### Financial penalties and administrative measures

Administrative sanctions in the form of financial penalties can arise from data breaches or other violations of the Data Protection Act (DPA).

The applicable fines depend on the nature and seriousness of the breach and range between EUR500 and EUR30,000. Sector-specific legislation in the electronic communications sector sets much higher administrative fines (up to EUR5 million).

Ancillary administrative measures, such as temporary or permanent data processing bans or data blockage, erasure or total or partial data destruction (among others) may also be ordered by the National Commission for the Protection of Data.

### Criminal sanctions

The DPA also establishes criminal sanctions for specific types of breach. Criminal offences are punished by a prison sentence of up to two years or a 240-day fine, both of which can be doubled in aggravating circumstances.

### Civil Liability

Individuals can claim compensation for damages caused to them by the data controller's breach (by act or omission) of DPA

provisions. Compensation for serious injury to feelings may be also claimed.

## 6. Are there any other ways in which privacy rights can be enforced?

Pre-emptive civil measures could be requested by individuals in the context of protecting their personal rights against continuous or imminent breaches to the Data Protection Act.

## Practical Law Contributor profiles



### Helena Tapp Barroso, Partner

Morais Leitão, Galvão Teles, Soares da Silva & Associados – Sociedade de Advogados  
T +351 213 817 455  
F +351 213 817 494  
E htb@mlgts.pt W www.mlgts.pt



### João Alfredo Afonso, Partner

Morais Leitão, Galvão Teles, Soares da Silva & Associados – Sociedade de Advogados  
T +351 213 817 426  
F +351 213 817 494  
E joaoafonso@mlgts.pt W www.mlgts.pt

**Professional qualifications.** Portugal, Law Degree, Law Faculty of the Portuguese Catholic University, 1989; Master's Degree in Commercial Law and Capital Markets (Law Faculty of the Portuguese Catholic University, 1995)

**Areas of practice.** Personal data privacy and protection; labour and social security (labour law, labour litigation, social security and pensions).

**Languages.** Portuguese, English, French and Spanish

**Professional associations/memberships.** Portuguese Bar Association, 1991; Portuguese Bar Association (member of the Lisbon District Council from 1999 to 2001); member of the IAPP (International Association of Privacy Professionals)

### Publications

- Employment & Industrial Relations Law, Volume 27, No. 1 -, IBA Legal Practice Division, Preventing recruitment discrimination: social media and background checks in Portugal, April 2017 ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/IBA\\_New\\_sletter\\_Employment\\_\\_Industrial\\_Relations\\_Law.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/IBA_New_sletter_Employment__Industrial_Relations_Law.pdf)).
- Data Protection and Privacy, Portugal, Getting the Deal Through, 2017 (<https://gettingthedealthrough.com/area/52/jurisdiction/20/data-protection-privacy-2017-portugal/>)
- Lex Mundi Global Data Privacy Guide, Portugal, 2017 (<https://interactiveguides.lexmundi.com/lexmundi/global-data-privacy/portugal>)
- Global Handbook on Employment Litigation: Procedures, Remedies and Best Practices - Portugal - L&E Global, 2016 ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2016/L\\_E\\_Global\\_Annual\\_Publication\\_2016.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2016/L_E_Global_Annual_Publication_2016.pdf)).

**Professional qualifications.** Portugal, Law Degree, Law Faculty of the Portuguese Catholic University, 1998

**Areas of practice.** Corporate and commercial (corporate law, mergers, acquisitions and joint ventures), personal data privacy and protection.

**Languages.** Portuguese, English, French and Spanish

**Professional associations/memberships.** Portuguese Bar Association, 2000.

### Publications

- Data Protection Impact Assessments under the GDPR: questions unanswered? - Data Protection Leader ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/DPL\\_Data\\_Protection\\_Impact\\_Assessments\\_under\\_the\\_GDPR\\_questions\\_unanswered\\_MAI02017.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/DPL_Data_Protection_Impact_Assessments_under_the_GDPR_questions_unanswered_MAI02017.pdf)).
- Gaming Global Guide: Portugal 2017 - Thomson Reuters ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/TR\\_Gaming\\_Global\\_Guide\\_Gaming\\_in\\_Portugal\\_Overview.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/TR_Gaming_Global_Guide_Gaming_in_Portugal_Overview.pdf)).
- Shared liquidity in Portugal: Regulation notified to the European Commission - Online Gambling Lawyer ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/OGL\\_February\\_2017\\_pg6-7.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2017/OGL_February_2017_pg6-7.pdf)).
- Issues preventing the launch of operations in Portugal - Draft regulations issued on betting exchanges and liquidity ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2016/WOGLR\\_March\\_2016\\_pg\\_14.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2016/WOGLR_March_2016_pg_14.pdf)).

- 
- Data Transmission and Privacy, Portugal, Center for International Legal Studies, Kluwer, Boston, 1994 (<https://books.google.pt/books?id=bMU6DOAnV-sC&pg=PA435&lpg=PA435&dq=Data+Transmission+and+Privacy,+%E2%80%98Portugal%E2%80%99,+Center+for+International+Legal+Studies&source=bl&ots=vRk-SMdzrx&sig=tWdjSX3s6GMNEoeav45vSj5GQa0&hl=pt-PT&sa=X&ved=0ahUKEwiv-4Lu6vLVAhUJtRoKHXPUAwlQ6AEIKTAA#v=onepage&q=Data%20Transmission%20and%20Privacy%2C%20%E2%80%98Portugal%E2%80%99%2C%20Center%20for%20International%20Legal%20Studies&f=false>).



**Tiago Félix da Costa, Partner**

Morais Leitão, Galvão Teles, Soares da Silva & Associados – Sociedade de Advogados

**T** +351 210 091 783

**F** +351 213 817 494

**E** [tfcosta@mlgts.pt](mailto:tfcosta@mlgts.pt) **W** [www.mlgts.pt](http://www.mlgts.pt)

**Professional qualifications.** Portugal, Law Degree, Law Faculty of the University of Lisbon, 2002; Postgraduate Studies in Corporate Law, Management Institute/Portuguese Bar Association, 2004; Master's Degree in Law, Law Faculty of the Portuguese Catholic University, 2009; Advanced Training Course on Data Protection Compliance in the EU, European Institute of Public Administration – EIPA, 2017

**Areas of practice.** Litigation and arbitration (civil and commercial litigation, constitutional law, criminal litigation, misdemeanour litigation and compliance); personal data privacy and protection.

**Languages.** Portuguese, English and French

**Professional associations/memberships.** Portuguese Bar Association, 2004.

**Publications.** *Litigation in Portugal - Chambers Legal Practice Guides*, 2014 ([www.mlgts.pt/xms/files/Publicacoes/Artigos/2014/Chambers\\_Legal\\_Practice\\_Guides\\_Litigation\\_2014.pdf](http://www.mlgts.pt/xms/files/Publicacoes/Artigos/2014/Chambers_Legal_Practice_Guides_Litigation_2014.pdf)).