


XVI. Electronic communica- tions



ML

Glossary

ANACOM

National Communications Authority

BEREC

Body of European Regulators for Electronic Communications

Joint Statement from the Commission and BEREC

Joint Statement from the Commission and the Body of European Regulators for Electronic Communications (BEREC) on coping with the increased demand for network connectivity due to the COVID-19 pandemic, dated 19-03-2020

Decree-Law 10-D/2020

Decree-Law no. 10-D/2020 of 23 March

ERC

Regulatory Authority for the Media

Regulation 303/2019

Regulation 303/2019 of 1 April, on the security and integrity of electronic communications networks and services

EU Regulation 2015/2120

EU Regulation 2015/2120 of the European Parliament and of the Council of 25 November laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and EU Regulation No 531/2012 of the European Parliament and of the Council of 13 June on roaming on public mobile communications networks within the Union

SMS

Short Message Service

VPN

Virtual Private Network

XVI. ELECTRONIC COMMUNICATIONS

In the context of the ongoing emergency responses surrounding the COVID-19 pandemic, the Portuguese Government has enacted specific legislation enabling electronic communications operators to adopt exceptional traffic management measures in order to prevent or mitigate network congestion. This legislation appeared only days after the recent publication, on 19-03-2020, from the BEREC on coping with the increased demand for network connectivity due to the COVID-19 pandemic⁽¹⁾, which discusses the imminent need to adopt exceptional traffic management measures in light of the rules on open internet access established in [EU Regulation 2015/2120](#).

The fact that, to a large extent, a significant proportion of the population will be confined to their homes for a potentially long period has already led to a sizeable increase in traffic volumes (both voice, and especially, data) on fixed and mobile networks both as a result of work-from-home policies and a more intensive use of entertainment and interactive services.

[Decree-Law no. 10-D/2020](#) seeks to respond to these circumstances in Portugal by adopting exceptional and temporary measures for the electronic communications sector such as identifying critical electronic communications services and defining categories of priority customers. This legislation also gives operators temporary exemption from several obligations that could undermine their objectives.

Therefore, lawmakers established that services defined as critical are to be given priority for purposes of service continuity and include the following: (i) voice and SMS on fixed and mobile networks; (ii) continuous access to emergency services, including information on caller location, and issuance of warnings to the public; (iii) data services, on fixed and mobile networks, required to ensure a minimum set of broadband internet services (these include e-mail, search engines, online teaching tools, online news, online shopping, job search, online banking, financial and insurance services, online services provided by public authorities and messaging services)⁽²⁾; (iv) free-to-air television broadcasting and digital terrestrial television.

When providing these critical services, network and service providers must prioritize several categories of customers, notably public sector entities mainly involved in the provision of healthcare, security and logistical services. The list of priority customers mostly replicates the similar concept of “relevant clients” set out in [Regulation no. 303/2019](#) (approved by ANACOM), on the security and integrity of electronic communications networks and services and includes, among others: (i) the Ministry for Health and healthcare providers from the Portuguese national health service; (ii) the entities responsible for managing the emergency communications integrated system; (iii) the Ministry for Internal Affairs (regarding civil protection authorities and the national internal security network); (iv) the Portuguese armed forces; (v) the national cybersecurity centre; (vi) police authorities; (vii) support services to the Portuguese Presidency, Parliament and Government (and to the equivalent regional bodies for the autonomous regions of the Azores and Madeira); (viii) the Regulatory Authority for the Media (ERC), the

⁽¹⁾ https://berec.europa.eu/eng/document_register/subject_matter/berec/others/9236-joint-statement-from-the-commission-and-the-body-of-european-regulators-for-electronic-communications-berec-on-coping-with-the-increased-demand-for-network-connectivity-due-to-the-covid-19-pandemic.

⁽²⁾ The list of minimum services for fixed broadband internet access includes, in addition, networking connections for professional purposes (e.g. VPN services) and standard quality audio and videoconferencing.

Portuguese Central Bank (*Banco de Portugal*) and other regulatory authorities; (ix) providers of essential services (e.g., energy, transport, banking, healthcare providers, water distribution and digital infrastructure) and managers of critical infrastructure; and (x) the Ministry of Education, in respect of online teaching tools.

In order to prioritize continuity of the services defined as critical, electronic communications network and service providers are authorized, when necessary, to implement exceptional measures consisting of traffic and network management (including by means of mobile network capacity reservation) and prioritization of repair and maintenance tasks. If necessary, operators may propose the adoption of additional measures to the Government. Furthermore, operators are also authorized to resort to mobile network systems and technologies to reinstate critical services supported by fixed networks. These measures must be implemented in a proportionate and transparent manner and must not remain in place for longer than is necessary to ensure continuity of services affected by the network congestion.

In order to ensure network integrity and safety and prevent congestion, electronic communications network and service providers must, where this is strictly necessary, prioritize traffic categories, according to a decreasing priority scale. For landline communications, voice services and fixed broadband minimum services are priority 1; video contents are priority 2; non-linear audiovisual services, video platforms and restart TV are priority 3; and services such as online gaming and peer-to-peer platforms bring up the rear, as priority 4. For mobile network communications, the grading of priorities is very similar: voice and SMS, as well as the minimum set of mobile broadband services, are priority 1; videoconferencing (standard quality) and VPN solutions for work-at-home purposes are priority 2; and video contents, online gaming and peer-to-peer platforms are in the last category as priority 3 services.

If also necessary, certain service functionalities in the lower priority categories may be limited or inhibited. These include non-linear audiovisual services, video platforms, restart TV, online gaming and peer-to-peer applications. Furthermore, if it proves necessary to prevent or mitigate network congestion, operators are authorized to adopt other measures for network and traffic management, notably by blocking, slowing down, altering, restricting or degrading contents in relation to specific services or applications. Traffic from interpersonal communications services may be routed through messaging or voice applications and operators may preemptively reserve mobile network capacity for voice and SMS services.

Any of these traffic management measures must be notified to the Government and to ANACOM prior to adoption or, when their urgency does not allow for prior notice, within 24 hours after implementation.

As a complement to the implementation of the measures described above, with the goal of prioritizing continuity of critical services, Decree-Law no. 10-D/2020 also temporarily exempts electronic communications network and service providers from complying with several obligations. These include, among others, certain quality of service parameters; the standard deadlines for responding to consumer complaints; defined time periods within which to ensure specific mobile broadband coverage obligations (originally imposed in the context of the auction procedure for the award of 4G spectrum); and an extension of remote portability request implementation deadlines, to five business days.

This legislation is in line with the exceptions provided for in Article 3(3) of EU Regulation 2015/2120 and with the analytical framework set out in the Commission and the BEREC's recent Joint Statement. It came into force on 24-03-2020 and will be effective for as long as

the exceptional legal framework for approaching the COVID-19 pandemic emergency remains in effect, and it is hoped that this will give Portuguese operators the flexibility needed to cope with expected network congestion issues.

It is also worth mentioning the adoption of other exceptional and temporary measures in response to COVID-19, namely those provided for in Law no. 7/2020 of April 10. This law approved a set of rules aimed at prohibiting the suspension of

the supply of electronic communication services during the state of emergency and the following month, in cases where consumers are in financial difficulty due to the current circumstances. In these cases, the law also provides for a payment plan to be drawn up. Additionally, while this law is in force, consumers who are unemployed or have seen their household income fall 20 % or more (in relation to the previous month income) may also request the unilateral termination of telecommunications contracts, without compensation to the respective provider.

AUTHORS



**Gonçalo
Machado Borges**
Partner

MORAIS LEITÃO

GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

Supporting clients, anywhere, anytime.



MORAIS LEITÃO, GALVÃO TELES, SOARES DA SILVA & ASSOCIADOS

LISBOA

Rua Castilho, 165
1070-050 Lisboa
T +351 213 817 400
F +351 213 817 499
mlgtslisboa@mlgts.pt

PORTO

Avenida da Boavista, 3265 – 4.2
Edifício Oceanvs
4100-137 Porto
T +351 226 166 950 - 226 052 380
F +351 226 163 810 - 226 052 399
mlgtsporto@mlgts.pt

FUNCHAL

Av. Arriaga, n.º 73, 1.º, Sala 113
Edifício Marina Club
9000-060 Funchal
T +351 291 200 040
F +351 291 200 049
mlgtsmadeira@mlgts.pt

mlgts.pt

ALC ADVOCADOS

LUANDA

Masuika Office Plaza
Edifício MKO A, Piso 5, Escritório A/B
Talatona, Município de Belas
Luanda – Angola
T +244 926 877 476/8/9
T +244 926 877 481
geral@alcadvogados.com

alcadvogados.com

HRA ADVOCADOS

MAPUTO

Avenida Marginal, 141, Torres Rani
Torre de Escritórios, 8.º piso
Maputo – Moçambique
T +258 21 344000
F +258 21 344099
geral@hrlegalcircle.com

hrlegalcircle.com

MdME LAWYERS

MACAU

Avenida da Praia Grande, 409
China Law Building
21/F and 23/F A-B, Macau
T +853 2833 3332
F +853 2833 3331
mdme@mdme.com.mo

HONG KONG

Unit 2503 B
25F Golden Centre
188 Des Voeux Road
Central, Hong Kong
T +852 3619 1180
F +853 2833 3331
mdme@mdme.com.mo

Foreign Law Firm

mdme.com.mo