

## **Law no.78/2015 of 29 July**

**This regulates the promotion of the transparency of the ownership, management and means of financing of those entities that carry out media activities and it alters the Press Act, the TV Act and the Radio Act.**

Under the terms of article 161, paragraph c) of the constitution, parliament decrees as follows:

### **Article 1**

#### **Aims**

1 - This law regulates the transparency of the ownership, management and means of financing of those entities that carry out media activities, with a view to the promotion of freedom and the pluralism of expression and safeguarding its editorial independence vis-à-vis the political and economic powers.

2 — The legal regime determined in this law does not prejudice the application of the shareholding transparency regime of corporations whose capital is open to public investment, namely with regard to the duties of communication, foreseen in the Securities' Code, nor does it preclude compliance with any duties of other sectorial regulation regimes, namely the legal regime defending competition or the legal regime for electronic communications' services and networks.

### **Article 2**

#### **Scope of application**

1 — This law applies to all the entities identified in article 6 of the Articles of Association of the Regulatory Authority for the Media (ERC), approved by Law no.53/2005 of 8 November which, under the jurisdiction of the Portuguese state, carry out media activities, namely:

- a) News agencies;
- b) Individuals or companies that produce periodical publications, regardless of the form of distribution;
- c) Radio and television operators in relation to their programme services and any complementary content they supply, for which they have editorial, responsibility, on any media, including electronic;
- d) Individuals or companies that use electronic communications networks to make radio or television programme services available to the public, to the extent to which they are responsible for their selection and aggregation;
- e) Individuals or companies who regularly use electronic communications networks to make available to the public content submitted to editorial treatment and organised as a coherent whole.

2 — This law also applies to the owners and holders of stakes in the share capital of those entities referred to in the previous number above.

### Article 3

#### **Transparency of ownership and management**

1 — The list of holders on their own behalf or on behalf of third parties, and beneficial owners of stakes in the share capital of those entities that carry out media activities, along with the composition of their governing bodies, as well as the identification of the party responsible for editorial orientation and the supervision of the contents disseminated, is notified to the ERC by the entities referred to in article 2, no.1, notwithstanding observance of the provisions of article 16, where applicable.

2 - The list of owners and holders mentioned in the previous number must duly:

- a) Identify and itemise the percentage stakes in share capital of the respective holders;
- b) Identify and itemise the whole chain of entities to which a stake of at least 5% must be attributed, under the terms of article 11, no.3;
- c) Indication of the stakes of those holders in corporate bodies who hold direct or indirect stakes in other media bodies.

### Article 4

#### **Renewal and updating of information**

The communication referred to in no.1 of the previous article must be renewed and updated within 10 business days after the occurrence of the following factual grounds:

- a) Acquisition or exceeding, by an owner or holder, of 5%, 10%, 20%, 30%, 40% or 50% of the share capital or voting rights;
- b) Acquisition or exceeding, by any entity in the chain to which a stake must be attributed of at least 5% of the ceilings of 5%, 10%, 20%, 30%, 40% or 50% of the share capital or voting rights;
- c) Reduction, by a holder or owner, of their stake to an amount lower than each of the percentages indicated in the previous paragraphs;
- d) Alteration to the field of the entity which carries out media activities;
- e) Alteration to the composition of the administration and management bodies or to the structure of responsibility for the orientation and supervision of the contents disseminated;
- f) Alteration to the corporate stakes, by the owners and holders of entities which carry out media activities in corporate bodies which hold direct or indirect stakes in other media bodies.

### Article 5

#### **Transparency of the main means of financing**

1 — The ERC is also notified about information pertaining to the main financial flows for the management of those entities covered by this law, under terms to be defined in an ERC regulation which stipulates the nature of the data to be conveyed and the frequency of the information obligation.

2 — This obligation only applies to those entities which are required to have organised accounts in accordance with the accounting standards applicable or by dint of other legal provisions in force.

3 — This obligation must include the list of individuals or corporate bodies that have, by whatsoever means, individually contributed at least more than 10% to the income calculated in the accounts of each of said entities or which hold credits liable to assign them a relevant influence on the company under the terms to be defined in the ERC regulation.

4 — In the event that the information to be requested by the ERC consists of information already in the possession of the administration or another public body, the entities are dispensed from having to communicate them as long as they consent to their transmission to the ERC by the services that hold them, namely in the event of the accounts for the financial year.

#### Article 6

##### **Public availability of the information**

1 — The information conveyed to the ERC under the terms of article 3, no.1, article 5 and article 16 is publicly accessible except in those cases in which the ERC believes that fundamental interests of the parties concerned justify exceptions to this principle.

2 — The ERC provides this information at its official website by means of a data base which is easy to access and consult, especially created to this end.

3 — The information itemised in articles 3 and 4 and in article 5 nos.1 and 2, must also be made available within 10 business days on the home page of the website of each of the media bodies held by the entities subject to communication obligations, at a place which is easy to identify and access, by means of formatting in a form which is easy to read and habitually used for news texts.

4 — If there is no website, the information must be provided within 10 business days on one of the first 10 pages of all the periodic publications held by the entity subject to said duty and, if said entity holds other media, on one of the first 10 pages of a national newspaper with general information by means of formatting in a form which is easy to read and habitually used for news' texts.

5 — The information and elements transmitted to the ERC under the terms of articles 3 to 5 and article 16 and disseminated publicly by the latter under the terms of no.1 of this article, may be used by the ERC for the performance of its duties and competences, namely as regards the safeguarding of the free exercising of the right to information and press freedom, the safeguarding of the independence of the entities which carry out media activities before the economic and political powers and the defence of pluralism and diversity with regard to the powers of influence over public opinion.

#### Article 7

##### **Limited liability companies**

The shares representing the share capital of limited companies that directly hold one or more media bodies, must be in the nominative form.

#### Article 8

##### **Non-corporate legal persons**

The obligations foreseen in articles 3 to 6 are applicable, making the necessary adaptations in those cases in which they prove necessary, to any non-corporate legal persons which carry out media activities, namely associations, cooperatives or foundations.

## Article 9 **Individuals**

Any individuals who directly carry out communication activities or who are holders and owners of stakes in the share capital of the entities referred to in article 2 are subject, with the necessary adaptations, to the provisions of articles 3, 4 and 6.

## Article 10 **Notifications subject to registration**

1 — Further to the carrying out of registration acts pertaining to the ownership of the entities that undertake media activities, said acts must be communicated to the ERC by the party responsible for registration, at their initiative, regardless of whether it is of a public or private nature.

2 — The entities that undertake media activities must inform the ERC within 10 days after practising the registration acts referred to in the previous number of any detailed information about the facts subject to registration, namely:

- a) The identification of the stakes and of the respective complete characteristics, namely the rights especially included or excluded and the nominal or percentage value;
- b) The identification of the holder and, if there is joint holdership, of the common representative;
- c) The identification of the registration act requesting party;
- c) The identification of the registration act beneficiary;
- e) The description of the facts underlying the obligation of subjection to registration, namely the formation, modification or extinguishing of rights of ownership, usufruct, pledge, seizure, attachment to any other legal situation concerning the shareholdings or the instigation of legal or arbitration actions pertaining to the actions registered or the actual registration as well as the respective decisions.

## Article 11 **Qualified shareholdings**

1 — Whoever holds directly or indirectly, alone or jointly, a shareholding equal to or greater than 5% of the share capital or of the voting rights of entities that carry out media activities is subject to the duties foreseen in articles 12, 13 and 15.

2 — The duties foreseen in the previous number are also applicable to whosoever, having a shareholding equal to or greater than 5%, increases or reduces their qualified shareholding.

3 — For the purposes of calculating qualified shareholdings, the shareholdings are considered, namely, which are:

- a) Held directly;
- b) Held on a usufruct basis;
- c) Held by third parties in their own name, but on behalf of the stakeholder;
- d) Held by a company controlled by the stakeholder or which has a group relationship with it;
- e) Held by the holders of voting rights with which the stakeholder has entered into any kind of shareholders agreement;
- f) Held by the members of its administration or supervisory bodies when the stakeholder is a corporate body;
- g) Which the stakeholder may subsequently acquire by dint of an agreement already signed with the respective holders;
- h) Formed as collateral or deposited vis-à-vis the depository when it has been bestowed voting rights or discretionary powers for their exercising;
- h) Administered by the stakeholder when it has been bestowed voting rights or discretionary powers for their exercising;
- j) Held by people who have entered into any agreement with the stakeholder who seeks to acquire control of the company or impede the alteration of control or who have in some other way formed an instrument of concerted exercise of influence over the company in which shares are held.

4 — For the purposes of the special duties of information foreseen in article 12, any shares belonging to the spouse, to the partner and to common-law relations, descendants and ascendants, as well as relations up to the second degree, unless there is clear evidence of the lack of control, to be submitted to the ERC.

## Article 12

### **Special duties of information**

1 — Whenever they attain or exceed the limit stipulated in no.1 of the preceding article, when they reduce their stake to an amount lower than said limit or when, under other circumstances, they increase or reduce a qualified shareholding, the respective holders inform the ERC and the entity in which shares are held, within 10 working days subsequent to the occurrence of the fact that justifies them, not being subject to any charges or fees.

2 — The entity in which shares are held must publish, within two business days, the information received under the terms of the preceding number, on the home page of the website of each of the media bodies held by it at a place which is easy to identify and access, by means of formatting in a form which is easy to read and habitually used for news' texts.

3 — If there is no website, the information must be provided on one of the first 10 pages of the first edition subsequent to occurrence of the fact justifying the duty of communication by formatting in a form which is easy to read and habitually used for news texts, in the case of periodic publications or, in the case of the other media bodies, on one of the first 10 pages of a national newspaper with general information by formatting in a form which is easy to read and habitually used for news texts.

4 — The entity in which shares are held and each of the holders of its governing bodies must inform the ERC when they learn of any breach, or of well-founded circumstantial

evidence of a breach, of the duties of information by the holders of qualified shareholdings.

5 — In the event of private limited companies with shares, in a collective name or on a partnership basis, only the communication to the entity in which shares are held and the publication foreseen in nos. 2 and 3 is waived.

#### Article 13

##### **Attribution chain**

1 - Any communication made under the terms of article 11, no.1 must identify the whole chain of entities to which a qualified shareholding must be attributed.

2 — The duty of identification of the attribution chain constitutes a regulation to be applied immediately which binds any holder of shareholdings in entities that carry out media activities in Portuguese territory, regardless of their subjection to foreign law.

#### Article 14

##### **Breach of duties of transparency**

1 — In the event that no communication is made, if the latter fails to identify the whole chain of entities to whom the qualified shareholding must be attributed or if, in any case, there are well-founded doubts about the identity of said entities or about full compliance with the communication duties, the ERC notifies this to the shareholders, the administration and supervisory bodies and the chair of the general assembly board of the entity that carries out media activities, as well as the respective chartered accountants and publicly known auditors.

2 — Within 10 business days after notification, the parties concerned may submit proof intended to clarify those aspects raised by the ERC notification, or take measures with a view to ensuring the transparency of the ownership of the qualified shareholdings.

3 — If the elements submitted or the measures taken by the parties concerned fail to end the situation, the ERC publishes the lack of transparency with regard to the ownership of the qualified shareholdings in question, namely at the website and publication on the first 10 pages of two national newspapers with general information, in a manner which is easy to read and habitually used for news' texts.

4 — Based on any of the publications referred to in the previous number, the exercising of the voting rights and asset rights inherent in the qualified shareholding in question is automatically suspended forthwith until the ERC publishes a new communication and notifies the entities referred to in no.1 that the situation involving a lack of transparency of the ownership of the qualified shareholdings has been corrected.

5 — The asset rights referred to in the preceding number which fall to the qualified shareholding concerned are deposited in an individual account open with a credit institution entitled to receive deposits in Portuguese territory, and debit transactions may not be carried out therein for as long as the suspension lasts.

6 — The provisions of nos.1 to 3 apply, making the necessary adaptations, to the failure to convey to the ERC the elements and information foreseen in article 5.

Article 15  
**Shareholder agreements**

1 — Shareholder agreements which seek to acquire, maintain or increase a qualified shareholding in an entity that carries out media activities are notified to the ERC within 10 business days as from when they are signed.

2 — The ERC may publish or order the publication, by those people party thereunto, after hearing them, of the whole text or excerpts from those shareholder agreements in line with the aims pursued by this law and the degree of confidentiality of the information contained therein.

3 — Any corporate decisions taken in line with votes cast in the performance of agreements not communicated or not published are ineffective unless it is proven that the decision would have been approved without those votes.

Article 16  
**Annual report on corporate governance**

1 — The entities referred to in article 2, no.1 which, in a corporate form, carry out media activities, must draw up and send to the ERC, by 30 April each year, a report containing true, complete, objective and up-to-date information about the corporate governance structures and practices adopted by it.

2 — The information to be included in the report shall be defined in an ERC regulation and it must contain, namely: the names on the governing bodies and concurrent professional activities; the relevant mechanisms which ensure editorial independence; the existence and description of the internal monitoring systems and the communication of any irregularities with regard to the monitoring of the means of financing obtained.

Article 17  
**Administrative offence liability**

1 — It is incumbent upon the ERC to process and punish any administrative offences foreseen in this law, with the sanction procedures being subject to the provisions of the administrative law infringements regime or to the provisions of the Criminal Code of Procedure.

2 — The following constitute very serious administrative offences:

*a)* Failure to communicate or defective communication to the ERC of the information foreseen in article 5;

*b)* Non-subjection to the nominative form of the shares of the entities that carry out media activities in accordance with that imposed by article 7;

*c)* The concealment of the holding of qualified shareholdings in entities which pursue media activities, with a view to avoiding compliance with the duties foreseen in the present act;

*d)* Failure to communicate the obtaining, exceeding or reduction of a qualified shareholding under the terms foreseen in article 11, no.1 and article 12, no.1;

e) Failure to communicate or defective communication of any shareholder agreements which seek to acquire, maintain or increase a qualified shareholding in an entity that carries out media activities pursuant to article 15, no.1.

3 — The following constitute serious administrative offences:

- a) Failure to communicate or defective communication to the ERC of the information foreseen in article 3, article 4, article 6, nos. 2 and 3 and article 10, no.2;
- b) Failure to publish or defective publication by the affiliate entity of the communication of the obtaining, exceeding or reduction of a qualified shareholding under the terms foreseen in article 12, no.2;
- c) Failure to inform the ERC by the entity in which shares are held and/or each of the holders of its governing bodies when they learn of any breach, or of well-founded circumstantial evidence of a breach, of the duties of information by the holders of qualified shareholdings under the terms foreseen in article 11, no.4;
- d) Failure to communicate or defective communication of the identification of financing sources, under the terms required by article 9;
- e) Failure to draw up or defective drawing up, as well as the failure to send to the ERC the corporate governance report under the terms required by article 16.

4 — Very serious administrative offences are punishable by an administrative fine of € 5,000 to € 25,000 when practised by an individual and of € 50,000 to € 250,000 when practised by a corporate body.

5 — Serious administrative offences are punishable by an administrative fine of € 2,500 to € 12,500 when practised by an individual and of € 25,000 to € 125,000 when practised by a corporate body.

6 — In the event of an individual or corporate body that solely carries out local media activity, the minimum and maximum limits of the administrative fines foreseen in nos.4 and 5 are reduced to a third.

#### Article 18 **Initial communication**

The first communication for the purposes of the provisions of article 3, no.1 must be issued within 90 days after the date of the coming into force of the present act.

#### Article 19 **Alteration to the Press Act**

Article 15 of the Press Act, approved by Law no.2/99 of 13 January is changed, with the alterations made by Law no. 18/2003 of 11 June and by Law no.19/2012 of 8 May which shall henceforth have the following wording:

«Article 15  
[...]

1 — .....



2 — Periodic publications must also contain, on a page predominantly completed by information materials, the registration number of the title, the name, the company name or business name of the owner, the corporate body registration number, the names of the members of the board of directors or of similar posts and of the holders of 5% or more of company capital, the name of the manager, of the deputy managers and the assistant managers, the address or registered offices of the publisher, printer and the editors, the print run as well as the editorial statute or reference to a website where it is available.

3 — ..... »

#### Article 20 **Repealing regulation**

The following regulations are repealed:

- a) Article 4 of the Television Act, approved by Law 27/2007 of 30 July, amended by Law 8/2011 of 11 April;
- b) Article 3 of the Radio Act, approved by Law 54/2010 of 24 December;
- c) Article 4, no.2 and article 16 of the Press Act, approved by Law no.2/99 of 13 January is changed, with the alterations made by Law no. 18/2003 of 11 June and by Law no.19/2012 of 8 May.

#### Article 21 **Coming into force**

This act shall come into force 90 days after its publication.

Approved on 19 June 2015.

The Speaker of Parliament, in office, *Guilherme Silva*.

Enacted on 21 July 2015.

Let this be duly published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 23 July 2015.

The Prime Minister, *Pedro Passos Coelho*.