[PT] Video-sharing platforms are not subject to state media regulation

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On 6 April 2022, the *Entidade Reguladora para a Comunicação Social* (Portuguese Regulatory Authority for the Media — ERC), issued a decision stating that although on-demand audiovisual operators and services, and video-sharing platforms were both subject to registration with the ERC, only the first were subject to its general regulation and intervention, and to the Transparency Law, as a result of their editorial responsibility.

When the Audiovisual Media Services Directive (Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU) was transposed into the Portuguese context, it amended the Law on Television and Audiovisual Services on Demand (Law no. 27/2007, of 30 July). In particular, it altered Article 19 of the Law on Television to extend the scope of operators and providers subject to registration with the ERC, thus including audiovisual services on-demand and video-sharing platforms. The necessity of harmonising registration regulations within the ERC led the Portuguese legislator to issue rules for this registration (in Regulatory Decree no. 7/2021, of 6 December) and subsequently raised the need for the ERC to issue a public decision on the matter.

As stated in Article 1, no. 2, of the Regulatory Decree no. 7/2021, this registration process aims to “prove the legal status of the media, to publicise their ownership, organisation, functioning and obligations, as well as to ensure the legal protection of press titles, the names of radio broadcasters and radio programme services, of television broadcasters and television programme services, of radio and television programme services broadcast exclusively over the Internet, of on-demand audiovisual services’ operators and services, and providers of video-sharing platforms’ videos and video-sharing platforms”. Hence, compulsory registration with the ERC is applicable to all mentioned in that Article.

Nonetheless, given that video-sharing platform services do not have editorial responsibility, and this is a criterion for the applicability of the regulatory general framework of the ERC (the ERC’s Statutes) and of the Transparency Law, they are excluded from their scope in this regard. The public decision issued by the ERC aimed to clarify that video-sharing platform services, due to the lack of editorial responsibility, do not fulfill an essential criterion to be identified in the scope of application of the ERC Statutes and, consequently, of the Transparency Law.

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Lei n.º 78/2015, de 29 de Julho - Transparência da titularidade, da gestão e dos meios de financiamento - comunicação social

https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?artigo_id=selected&nid=2455&tabela=leis&pagina=1&ficha=1&nversao=

Law no. 78/2015, of 29 July - Transparency of media ownership, management and funding

Lei n.º 27/2007, de 30 de Julho - Lei da Televisão e dos Serviços Audiovisuais a Pedido

https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=923&tabela=leis&so_miolo

Law no. 27/2007, of 30 July - Law on Television and Audiovisual Services on Demand

Decreto Regulamentar n.º 7/2021, de 6 de dezembro - Regula o registo dos órgãos de comunicação social, operadores e fornecedores nacionais ou sujeitos à jurisdição do Estado Português

https://dre.pt/dre/detalhe/decreto-regulamentar/7-2021-175397117

Regulatory Decree No. 7/2021, of 6 December - Regulates the registration of national media, operators and suppliers or those subject to the jurisdiction of the Portuguese State

Estatutos da Entidade Reguladora para a Comunicação Social (ERC)

https://www.erc.pt/print/?info=YTozOntzOjEzOiJ0aXBvX2NvbnRldWRvIjtzOjM6ImNhbSI7czo0OiJsYW5nIjtzOjI6InB0IjtzOjExOiJpZF9jb250ZXVkbyI7czoyOiIxNCI7fQ==

Statutes of the state media regulatory body

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