

# Media law trends 2024

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# 1. The European Media Freedom Act – EMFA

The EMFA<sup>1</sup> is a European regulation that establishes a common framework for media services in the European Union's internal market. It aims to protect the pluralism, freedom and editorial independence of the media, and to protect journalists and media service providers from political interference.

The EMFA establishes the European Board for Media Services, composed of representatives of national authorities and supported by a secretariat. Among other things, the Board will act independently, promote the effective and consistent application of the European Union's media regulatory framework and replace the European Regulators Group for Audiovisual Media Services (ERGA) established by the Audiovisual Media Services Directive (AVMS Directive)<sup>2</sup>.

## 1.1. KEY FEATURES OF THE EMFA:

- **Protection of editorial independence:** media service providers have the right to operate without undue interference, ensuring editorial independence and freedom.
- **Protection of journalistic sources:** safeguards will be put in place to protect the confidentiality of journalistic sources and communications, including against the use of intrusive surveillance software.
- **Allocation of public funds for state advertising:** rules on the transparency of state institutional advertising will be introduced.

- **Ownership transparency:** the media will be obliged to disclose information on their ownership and sources of funding, thus promoting transparency in the sector.
- **Assessment of market mergers:** Member States must assess mergers in the media market that are likely to have a significant impact on media pluralism and editorial independence.
- **Users' right to customise the media offering:** users have the right to easily change the settings of any device or interface that controls access to media services in order to personalise the offer according to their interests or preferences.
- **Audience measurement:** providers of audience measurement systems will have to provide media service providers and advertisers with information on the methodology used by the audience measurement systems.
- **Very large online platforms (VLOPs):** VLOPs will have to provide new functionalities for service recipients to declare that they are media service providers, subject to regulatory requirements for the exercise of editorial responsibility. If content produced by a recognised media service provider is removed, the platform must notify the media service provider and provide a clear explanation of the decision. The media service provider has the right to appeal.

<sup>1</sup> Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Regulation on Freedom of the Media).

<sup>2</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018.

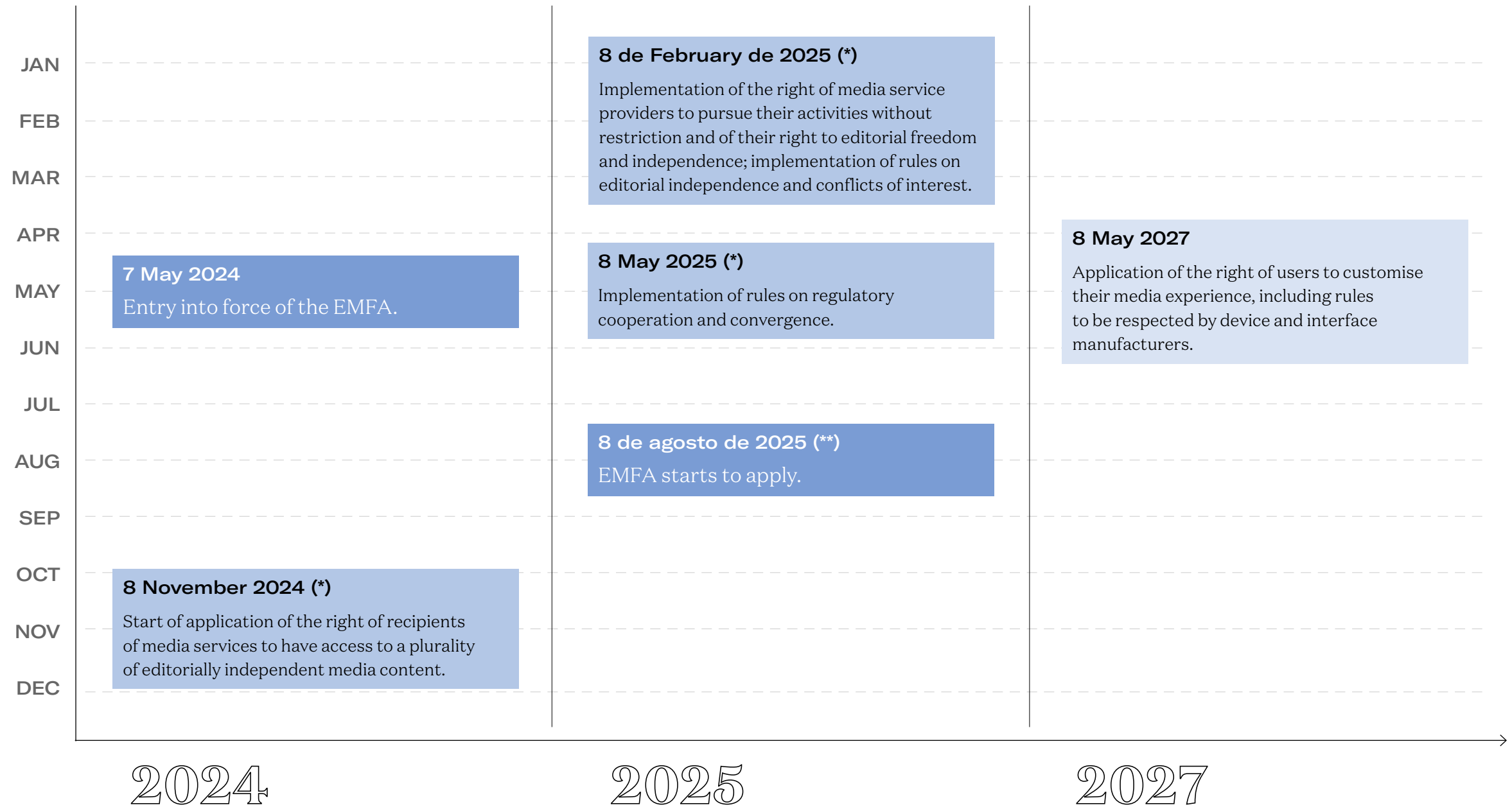
**Several of the obligations set out in the EMFA are not new to the Portuguese legal system.** The safeguarding of editorial independence and the protection of journalistic sources are values that are present in virtually all media legislation in Portugal. Transparency of ownership is regulated in detail by Law 78/2015 (the Media Transparency Law), which seeks to ensure transparency in the ownership, management and means of financing of organisations carrying out media activities. With regard to market concentration operations, Law 27/2007 of 30 July (the Law on Television and On-Demand Audiovisual Services) and Law 54/2010 of 24 December (the Law on Radio and Television Broadcasting) contain specific provisions that make concentration

operations subject to the intervention of the Competition Authority and the prior opinion of the ERC (the Portuguese Regulatory Authority for the Media), as well as changes in the ownership of operators subject to the prior approval of the ERC. Also with regard to state advertising, Law 95/2015 of 17 August establishes the rules and transparency obligations to which state institutional advertising campaigns are subject, as well as the rules applicable to their distribution in the national territory through local and regional media.

The regulatory landscape for media services in the European Union is very diverse. In contrast to Portugal, there are Member States with very little regulation of the sector. The challenge for the Portuguese legislature will therefore be to adapt the existing legal framework to the specific provisions introduced by the EMFA to ensure that the national rules do not conflict or overlap with the EMFA rules.

The challenge for the Portuguese legislature will therefore be to adapt the existing legal framework to the specific provisions introduced by the EMFA

1.2. EMFA TIMETABLE



(\*) Rules that start to apply before the EMFA comes into force;

(\*\*) Except for the right of users to customise their media experience, which begins to apply on 8 May 2027.



## 2. The Digital Services Act – DSA

The DSA<sup>3</sup> aims to regulate intermediary mere conduit, caching and hosting services (which include online platforms), in order to ensure the safety of users, the protection of fundamental rights and the creation of a fair and secure online environment. With regard to the media sector, the DSA is fundamental due to the content moderation obligations applicable to online platforms.

In Portugal, Decree-Law 20-B/2024 of 16 February designates ANACOM (the national regulatory authority for communications), the ERC (the regulatory authority for the media) and the IGAC (Inspectorate-General of Cultural Activities) as competent authorities, with ANACOM acting as coordinator of digital services. The ERC is the competent authority for media and other media content. In its opinion on the draft Decree-Law designating the competent authorities and the coordinator of digital services in Portugal [Decision ERC/2024/63 (Legal Op)] of 7 February 2024, the ERC warned that its powers should not be limited to “media matters” only, as envisaged in the proposal, but should also include “other media content”, which was adopted in the final wording of the Decree-Law.

At the time of writing, Draft Law 32/XVI/1st, which is intended to ensure the implementation of the DSA in the national legal system, is under discussion.

Throughout 2024, the Commission has published various instruments to assist in the interpretation and implementation of the DSA:

1.

Commission Delegated Regulation (EU) 2024/436 of 20 October 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council laying down rules on the conduct of audits of very large online platforms and very large online search engines.

(published on 2 February 2024)

2.

Commission Implementing Regulation (EU) 2024/607 of 15 February 2024 on practical and operational arrangements for the functioning of the information exchange system under Regulation (EU) 2022/2065 of the European Parliament and of the Council (“Digital Services Regulation”).

(published on 16 February 2024)

3.

Commission Communication: Commission Guidelines for very large online platform providers and very large online search engines on mitigating systemic risks to electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065.

(published on 26 April 2024)

4.

Commission Implementing Regulation (EU) 2024/2835 of 4 November 2024 establishing templates for transparency reporting obligations of intermediary service providers and online platform providers pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council.

(published on 5 November 2024)

<sup>3</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation).

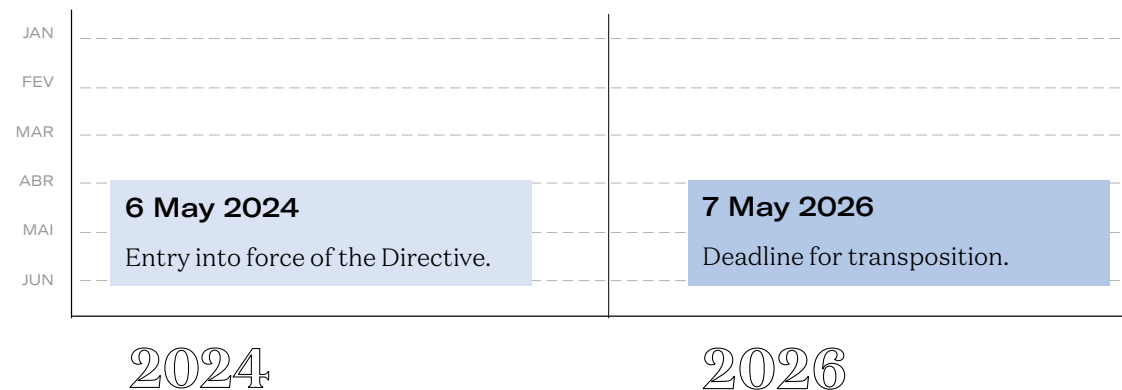
### 3. The Anti-SLAPP Directive

The Anti-SLAPP Directive<sup>4</sup> provides procedural safeguards to protect people who participate publicly in matters of public interest from manifestly unfounded or vexatious civil litigation, known as SLAPPs (Strategic Lawsuits Against Public Participation). Persons potentially falling within the scope of protection of the Directive include journalists, editors, media organisations, whistleblowers, human rights defenders, civil society organisations, NGOs, trade unions, artists, researchers or members of the academic community. The aim of the Anti-SLAPP Directive is to remove obstacles to the proper functioning of the civil justice system by preventing legal actions aimed at silencing people who take part in public participation activities.

#### 3.1. KEY FEATURES OF THE ANTI-SLAPP DIRECTIVE:

- o Introduction of an outright dismissal mechanism for manifestly unfounded claims
- o Corrective measures against abusive anti-public participation litigation, including the right to
  - a) recovery of costs incurred by the defendant
  - b) compensation for damage caused by vexatious proceedings
  - c) publication of the court decision by the person who brought the action

#### 3.2. THE ANTI-SLAPP DIRECTIVE TIMETABLE



### 4. European Commission evaluation of the application of the AVMS Directive

The Commission’s report on the application of the AVMS Directive between 2019 and 2022<sup>5</sup> considers that the AVMS Directive remains a fundamental instrument for harmonising the rules applicable to audiovisual services and for coordinating national legislative initiatives on audiovisual media in the European Union. In particular, the Commission has reached the following conclusions:

- o **Country of origin principle:** the principle remains relevant, with possible exceptions to be applied. Cooperation between regulators is essential, especially in complex cases involving satellite uplinks and satellites from other Member States. In this respect, the Commission considers that the mandatory cooperation mechanism foreseen in the EMFA will be relevant.

<sup>4</sup> Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on the protection of persons involved in public participation against manifestly unfounded claims or abusive legal proceedings (“strategic litigation against public participation”).

<sup>5</sup> Commission Staff Working Document: Report on the application of Directive 2010/13/EU Audiovisual Media Services Directive, as amended by Directive (EU) 2018/1808, for the period 2019-2022.

- **Protection of minors:** measures such as content classification, age verification and parental control are more robust. Visual and audible warning systems are widely used. However, only a few Member States have introduced additional monitoring initiatives.
- **Accessibility:** the use of subtitling, sign language and audio description has increased, especially in public services for programmes and content of general interest, such as news and political debates. Accessibility of on-demand audiovisual services has improved, although financial and technical difficulties remain a challenge.
- **Signal integrity:** no significant infringements were reported.
- **Audiovisual commercial communications:** the most frequently reported infringements concern the broadcasting of surreptitious advertising and breaches of the rules on product placement. In this respect, some Member States have adopted more restrictive rules in their national legislation than those laid down in the AVMS Directive.
- **Self-regulation and co-regulation initiatives:** Member States reported on initiatives to combat disinformation, promote inclusion and protect minors from alcohol and unhealthy food advertising. The introduction of measures to increase the effectiveness of self-regulatory initiatives was also reported.
- **Implementation of the provisions of the AVMS Directive applicable to video-sharing platforms (VSPs):** The majority of Member States have implemented the provisions of the Directive literally.

- **National authorities and cooperation:** although no significant problems of independence or impartiality were identified, challenges related to lack of financial and human resources were reported, which could ultimately affect compliance with the requirements of the AVMS Directive (and currently the EMFA). In terms of cooperation between national authorities, the creation of ERGA has facilitated cooperation and consistency in the implementation of the Directive, which will be reinforced by the EMFA.

## 5. The Media Action Plan

The Portuguese government has presented its Media Action Plan, which covers both traditional and digital media. According to the government, the plan is a response to rapid changes in media consumption and growing concerns about the sustainability and diversity of the media<sup>6</sup>.



<sup>6</sup> Media Action Plan - 24th Constitutional Government, dated 08.10.2024.



The Media Action Plan was structured around four main axes:

- **Regulation of the sector:** the government announced the creation of a Media Code, which will aim to unify the current Press Law, Television and On-Demand Audiovisual Services Law, Radio Law and Media Transparency Law into a single regime, reducing the current dispersion of legislation.
- **Public service concessions:** the government intends to renew RTP's concession contract and make it more flexible. It also intends to phase out commercial advertising on RTP. With regard to the Lusa News Agency, the government intends to clarify the shareholder structure and propose a new governance model.
- **Incentives for the sector:** the government has proposed a series of incentives, including financial support for hiring journalists.
- **Fighting disinformation and media literacy:** the government intends to develop educational campaigns and training programmes to help the public distinguish between fake and real news. The government also intends to subsidise digital subscriptions purchased by media organisations registered with the ERC by 50%. For each new digital subscription or renewal, the government will pay half the cost of the subscription. There are also plans to offer subscriptions to secondary school students.

## The government announced the creation of a Media Code.

## 6. ERC proposals to amend laws and directives

In recent years, the ERC has submitted a number of proposals for legislative amendments to the laws regulating the sector. In the previous legislature, in 2023, the ERC proposed to the Portuguese Parliament the revision of the Press Law and the Radio Law, but the sector criticised the lack of dialogue and the fact that the proposals were presented at a time when a new Regulatory Council was about to take office. In 2024, during the mandate of this Regulatory Council, the ERC presented a proposal to revise the Media Transparency Law<sup>7</sup>. On the regulatory front, in 2024 it also submitted for public consultation a draft directive on the separation of journalistic content from advertising/commercial content<sup>8</sup>.

### 6.1. KEY FEATURES OF THE PROPOSAL TO AMEND THE MEDIA TRANSPARENCY LAW:

- Reduction of the minimum and maximum fines, which the ERC considers to be more realistic and proportional to the average income of media organisations in Portugal;
- More detailed ERC procedures for situations of lack of transparency in qualifying holdings.
- Exemption from certain reporting obligations, such as financial flows, for companies that carry out media activities on an ancillary basis.

<sup>7</sup> ERC Decision/2024/329 (Opinion) Proposed revision of Law 78/2015 of 29 July (Transparency Law).

<sup>8</sup> Draft directive: Separation of journalistic content from advertising/commercial content.

## 6.2. KEY FEATURES OF THE DRAFT DIRECTIVE ON THE SEPARATION OF JOURNALISTIC CONTENT FROM ADVERTISING/COMMERCIAL CONTENT:

- The commercial nature of content must be apparent to the public from the outset of its distribution.
- Terms such as “partnerships”, “collaborations” and “support” can be imprecise. In this context, the ERC recommends that these terms be accompanied by additional information explaining the terms of these relationships so that the public is clear whether the content is journalistic or commercial.
- The participation of journalists in initiatives and events aimed at promoting products, services or organisations through their personal or institutional profile should be determined exclusively by editorial criteria.
- Media organisations should develop internal codes of conduct. These codes should guide the activities of professionals and clarify for the public the distinction between journalistic and commercial content.

Some of the proposed recommendations may be modified in the final version of the adopted Directive as a result of suggestions made during the public consultation.

## 7. Strategic Axes for the term of the ERC Regulatory Board 2023-2028

The ERC has defined ten strategic axes to guide the mandate of the Regulatory Board. These axes are aimed at ensuring freedom of expression, protecting journalists and promoting a robust and transparent media ecosystem. Some of these axes include clarifying and strengthening the ERC’s powers, working with the legislature to update the ERC’s statutes and sectoral laws in the field of communication and media, encouraging media organisations to develop self-regulatory mechanisms, promoting sustainability in the media sector, ensuring the dynamic and effective functioning of media markets, combating disinformation, contributing to the promotion of media literacy, promoting the development of a new ERC funding model, among others..

## 8. Cinema

### 8.1. INCENTIVES FOR FILM AND AUDIOVISUAL PRODUCTION

Ministerial Order 124-A/2024 establishes the rules for the application of the system of incentives for film and audiovisual production within the framework of the Tourism and Cinema Support Fund (cash rebate). This fund was created by Decree-Law 45/2018 and aims to support film and audiovisual production, as well as international filming for Portugal, with the aim of improving and promoting the country’s image.

The Ministerial Order complements Law 55/2012 (“Cinema Law”) by detailing the application of the financial incentives provided for film and audiovisual production. It is also linked to Decree-Law 45/2018, which created the Tourism and Cinema Support Fund.

## 9. Judgments of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECHR) relevant to media law

- **CJEU judgment in Reti Televisive Italiane SpA (RTI) of 30/01/24, Case C-255/21, ECLI:EU:C:2024:98:** The issue was whether advertising spots broadcast by a television operator to promote broadcasts by a radio operator belonging to the same broadcasting group could be considered as “announcements made by the broadcaster in connection with its own programmes”, in which case they would not be counted in the calculation of the time limits for television advertising imposed by the AVMS Directive. The ECJ concluded that such advertising was not covered by this exception because the promotion of programmes broadcast by a radio broadcaster, even if it is part of the same media group, does not constitute the promotion of an audiovisual media service. In this case, there is no editorial responsibility on the part of the television operator for the content of the radio operator. Consequently, such advertising must be counted against the hourly limits for television advertising laid down in the AVMS Directive.
- **CJEU judgment in IAB Europe of 07.03.2024, Case C-604/22, ECLI:EU:C:2024:214:** The issue was whether a TC string combined with an IP address constitutes personal data and, if so, whether IAB Europe should be classified as a controller under the Transparency and Consent Framework. The CJEU ruled that the TC string is personal data under the GDPR because, if it can be linked by reasonable means to an identifier, such as the IP address of the user’s device, it enables the identification of the individual concerned. The CJEU also held that a sectoral organisation must be classified as a “joint controller” if it influences the processing of personal data for its own purposes and determines, together with its members, the purposes and means of that processing. This is the case where the organisation proposes to its members a framework of rules on consent to the processing of personal data, including binding technical rules and detailed procedures for the storage and dissemination of personal data relating to that consent. The fact that this professional organisation does not itself have direct access to the personal data processed by its members under these rules does not prevent it from assuming the status of joint controller. In addition to its importance in the area of data protection law, this ruling is also relevant in the programmatic advertising ecosystem, where it is not uncommon for media companies to assume the role of publishers.



- **ECtHR judgment in *Mária Somogyi v. Hungary* of 16.05.2024 (application no. 15076/17):** The judgment was based on a complaint lodged under Article 10 of the Convention against a decision of the Hungarian national courts ordering the applicant to pay compensation for the violation of the personality rights of a municipality (Tata) for sharing a Facebook post criticising the management of assets and the misuse of public funds of that municipality. The ECtHR held that the decision of the Hungarian courts constituted an interference with the applicant's right to freedom of expression and, as such, a violation of Article 10 of the Convention. However, the ECtHR also recognised that the protection of the reputation of public bodies may be a legitimate aim, but only in exceptional circumstances.
- **ECtHR judgment in *Thomaidis v Greece* of 07.05.2024 (application no. 28345/16):** The judgment is based on a situation where a journalist was found guilty of civil liability for comments he made on a live television programme about alleged match-fixing in Greek football. The national courts considered the content of the comments to be defamatory. In the light of the facts, the ECtHR held that there had been no violation of Article 10 of the Convention, since the interference with the applicant's exercise of his right to freedom of expression in this case was considered "necessary in a democratic society" within the meaning of Article 10(2) of the Convention, adding that the national courts had acted within their margin of appreciation in striking a fair balance between the competing interests at stake.
- **ECtHR judgment *Rfe/RI Inc. and Others v. Azerbaijan* of 13.09.2024 (application nos. 56138/18 and 3 others):** The judgment concerns the widespread application of restrictive measures by the Government of Azerbaijan against four media outlets on the grounds that some of the articles published by the applicants contained content that allegedly contained false, misleading and defamatory information prohibited by the national media law and was therefore considered unlawful. The ECtHR found that the actions of the Azerbaijani authorities constituted unjustified interference with the freedom of the press in violation of Article 10 of the Convention.

## 10. 10. Artificial intelligence in the media

In 2024, we saw a continuation of the trend towards the mass use of some types of artificial intelligence (AI) across all industries, with the media sector of course being no exception. The use of AI can help drive innovation in content creation, personalisation and investigative journalism, but it also requires special care in terms of human control and oversight and regulatory compliance. The Artificial Intelligence Act (AI Act) takes a risk-management approach and requires, among other things, that AI systems be used responsibly and transparently. In this context, some media organisations have published their charters of principles for the use of AI or approaches to generative AI, as part of a national and international trend.

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