

Privacy in Portugal: overview

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A Q&A guide to privacy in Portugal.

The Q&A guide gives a high-level overview of privacy rules and principles, including what national laws regulate the right to respect for private and family life and freedom of expression; to whom the rules apply and what privacy rights are granted and imposed. It also covers the jurisdictional scope of the privacy law rules and the remedies available to redress infringement.

To compare answers across multiple jurisdictions, visit the *Privacy Country Q&A tool*.

This article is part of the multi-jurisdictional guide to data protection. For a full list of contents, please visit www.practicallaw.com/dataprotection-mjg.

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Legislation

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

General laws

The collection and processing of personal data is regulated by:

- Law 67/98 of 26 October (Data Protection Law), which transposed Directive 95/46/EC of the European Parliament and Council, of 24 October, on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
- Article 35 of the Portuguese Constitution that provides protection for personal data.

Specific laws

Specific laws regulate certain areas, such as the electronic communications sector:

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- Law governing the processing of personal data in the context of publicly available electronic communications networks and services (Law 41/2004 of 18 August, which implemented Directive 2002/58/EC on the protection of privacy in the electronic communications sector, as amended by Law no. 46/2012, transposing Directive no. 2009/136/EC of the European Parliament and Council, of 25 November).
- Law 32/2008, of 17 June, which implemented Directive 2006/24/EC of the European Parliament and Council of 15 March 2006, on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or public communications networks.

2. To whom do the privacy law rules apply?

The Data Protection Law applies to any individual or legal entity that collects, records, organises, stores, adapts, alters, retrieves, consults, discloses by transmission or performs any kind of process involving personal data. In what concerns individuals, the Data Protection Law is not applicable to purely domestic activities.

3. What privacy rights are granted and imposed?

The Data Protection Law recognises several rights of the data subject, including the right of access, rectification and objection to the processing of his personal data, without prejudice to specific legal regimes.

Access rights

The data subject has the right to obtain from the data controller, without constraint, within a reasonable term and without excessive delay or expense, the following:

- Confirmation of whether or not his/her personal data is being processed, and information on the:
 - purposes of the processing;
 - categories of data involved;
 - recipients or categories of recipient to whom the data is disclosed.
- Information, in an intelligible form, concerning the data processed and any available information about its source.
- An explanation of the logic used for any automatic processing of the data.

Rectification rights

The data subject has the right to ask the data controller:

- To rectify, remove or block data when the data processing does not comply with the provisions set out in the Data Protection Law (particularly if the data is incomplete or inaccurate).

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- For notification of any data that has been rectified, removed or blocked to third parties to which the data may have been disclosed (unless notification proves impossible).

Objection rights

The data subject has the right to object to the processing of his personal data, at any time, if there are compelling legitimate grounds relating to his particular situation. The controller can only continue processing the data if it is needed to pursue the legitimate interests of the controller or a third party, unless otherwise provided by law. The data subject's fundamental rights and freedoms can potentially override this.

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

As a general rule, only individuals or entities established in Portugal are subject to the rules and provisions of the Data Protection Law.

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

Financial penalties

The CNPD can impose fines if the data controller:

- Negligently fails to comply with the obligation of notifying the CNPD about the processing of personal data.
- Provides false information, or does not provide the information requested.
- Complies with the obligation to notify without observing the request of information or, having been notified by CNPD, continues to allow access to open data transmission networks to controllers who fail to comply with the provisions of the Data Protection Law.

The CNPD can apply the following fines:

- For a natural person: a minimum of EUR249.40 and a maximum of EUR2, 493.99.
- For a legal person or a body without legal personality: a minimum of EUR1, 496.40 and a maximum of EUR14, 963.94.

The limits above can be doubled to an approximate maximum value of EUR30, 000, if the data processing was subject to the CNPD's authorisation, as is the case with sensitive data.

In the electronic communications sector, breaching certain privacy rules is also considered to be an administrative offence, punishable with a fine of up to EUR5 million when committed by a legal person.

Civil and criminal liability

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The data controller can also incur civil or criminal liability, consisting of up to 1 year imprisonment or a fine of up to 120 days per offence, when he:

- Omits to submit the prior notification or application for authorisation to the CNPD.
- Provides false information in the documents issued to the CNPD.
- Misappropriates or uses personal data in a manner that conflicts with the purpose of the collection, notification or authorisation process.
- Promotes or carries out an illegal combination of personal data.
- Fails to comply with the obligations provided under the Data Protection Law and other data protection legislation within the period determined by the CNPD.
- Continues to allow controllers access to open data transmission networks when:
 - the controller has failed to comply with the provisions of the Data Protection Law; and
 - the CNPD has notified the person not to permit access to such a controller.

The above limits can be increased to up to double the maximum amount when the processing of personal data is connected to sensitive data or relating to:

- Persons suspected of illegal activities, criminal and administrative offences.
- Credit and the solvency of the data subjects.

In addition, if any person accesses certain personal data when prohibited from doing so without proper authorisation, that person is liable for up to one year's imprisonment or a fine of up to 120 days per offence. The limits of this penalty are also doubled when the access:

- Is achieved by violating technical security rules.
- Allows the agent or third parties to obtain knowledge of the personal data or.
- Provides the agent or third parties with a benefit or material advantage.

The CNPD can also apply additional penalties, such as ordering the blocking or destruction of the data, the temporary or permanent prohibition of personal data processing, or publishing the judgment (*Data Protection Law*).

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Areas of practice. Telecommunications; privacy, data protection & cybersecurity practice; media and IT operations, in the context of the VdAtlas program.

Recent transactions

- Ongoing assistance to several clients regarding the adaptation to the anticipated new EU Regulation.
- Assistance in the drafting of the full package of the new telecommunications and ICT draft legislation to be implemented in Angola (including data privacy).
- Negotiation of several procurement procedures and definition of public policies regarding privacy, cybersecurity and critical infrastructure.
- Assistance in the set-up, design and implementation of technologically sophisticated projects in the context of certification of the EuroPrise Data Privacy Seal

Languages. Portuguese, English, Spanish, French

Professional associations/memberships. Member of the Portuguese Bar Association, visiting Professor/ Lecturer of Telecommunications Law and Regulation and Privacy and Data Protection at the Catholic University of Lisbon and at the LLM in Public Law at the Management School of Lisbon; Core Member of the Group of Permanent Security in the Society of Information and the Portuguese Association for the Development of the Society of Information. Member of the Portuguese Association for the Development of Communications (*Associação Portuguesa para o Desenvolvimento das Comunicações*) (APDC).

Publications

- Aspen Publishers (Global Privacy and Security Law Book)
- PLC Cross-Border Handbooks (Data Protection)
- Iberian Lawyer
- Privacy Law and Business

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- IT Law Group (Global Privacy and Security Law Chapters for Portugal)

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