

# **INFORMATION, COMMUNICATION & TECHNOLOGY | SOCIAL ECONOMY & HUMAN RIGHTS**

PORTUGUESE CHARTER OF HUMAN  
RIGHTS IN THE DIGITAL AGE

VdA EXPERTISE



**May 2021**

## Portuguese Charter of Human Rights in the Digital Age

The [Law No. 27/2021](#), of 17 May, has approved the Portuguese Charter of Human Rights in the Digital Age ("Charter"), which establishes a set of innovative standards regulating the digital environment.

One of the main notes of the Charter is the vertical and horizontal nature of its norms, i.e., they set forth rights and duties that apply both to relations between the State and citizens, and to relations exclusively between private individuals.

The provision of new rights will certainly increase the compliance effort of private entities and the number of complaints submitted by users and entities which protect their rights.

Another feature which must be highlighted is the need to coordinate the provisions of the Charter with other legislation already approved or about to be approved as a result of various European initiatives regulating the digital environment; notably the General Data Protection Regulation, the Law on Electronic Communications Privacy (ePrivacy), the ongoing transposition of Directive (EU) 2019/790 on copyright in the digital single market ("DSM Directive"), the Proposal for a European Regulation harmonizing the rules on artificial intelligence (Artificial Intelligence Act) and the Proposal for the Digital Services Act, as well as the recent Commission's public consultation on the formulation of a set of principles to promote and uphold EU values in the digital space.

Pertaining the obligations or duties of promotion and protection of the State arising from the Charter, the creation of the **social tariff for Internet access services**, in favor of economically vulnerable end consumers, which

has already been approved by the Government and is currently awaiting publication, must be pointed out.

Moreover, it should be noted that the prohibition of intentional interruption of Internet access is established, which can only occur in statutory situations subject to special law.

It is also worth mentioning the establishment of **a right to net neutrality**, ensuring the absence of discrimination regarding the transmission and reception of content via the Internet.

Another novelty of the Charter is the provision of a right to a **digital will**. This right covers the possibility for people to dispose of their content and personal data on digital platforms after their death.

Additionally, and in spite of a significant number of ongoing European initiatives in the context of online content regulation, the Charter defines disinformation as "any demonstrably false or misleading narrative created, presented and disseminated for economic advantage or deliberately deceiving the public, and which is likely to cause public harm, including a threat to democratic political processes, public policy-making processes and public goods".

Within this scope, the Charter grants any person the right to lodge a complaint with the *Entidade Reguladora para a Comunicação Social* ("ERC", the Portuguese Media Authority), against entities that practice acts of disinformation foreseen in the Charter and which will follow the complaint procedure and the sanctioning regime arising from the ERC's Statutes.



Closely related to disinformation, the Charter establishes that the State should create fact-checking structures by duly registered media companies as well promote the attribution of quality seals by trustworthy entities endowed with public utility status, causing a lot of discussion.

Only further regulation and implementation of this rule will clarify the many doubts raised by its rather broad scope.

The protection of platforms' users is also strengthened by establishing the obligation to provide clear and simple information on the conditions of service provision when using platforms that enable information and communication flows.

The Charter also pays particular attention to the protection of minors by enhancing a particular protection of their well-being and safety in cyberspace as well as promoting freedom of expression and information, depending on their age and maturity.

As for the means granted to individuals to protect their rights and legal situations under the Charter, besides the recognition of the possibility to resort to procedural and material means of enforcement of rights and legal situations, the right to resort to popular action is also established.

Finally, we note that non-profit legal persons dedicated to promoting and defending the provisions of the Charter are entitled to obtain the status of public utility entity under the terms of the legislation applicable to cultural entities.

**The Charter will enter into force 60 days after its publication, on 18 July 2021.**

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