Decree-Law no. 175/99 of 21 May and Decree-Law no. 177/99, of 21 May, govern respectively the advertising of audiotext services and the access to and provision of audiotext services, ensuring transparency in the relations between the service providers and the consumer and an increased degree of clarification of the latter.

The permanent development of digital technologies and of equipment available to the consumer increased and diversified the offer of services similar to audiotext services, such as value-added SMS (short message service) and MMS (multimedia messaging service) services, supported on mobile communication devices, which are expected to be provided in the future to fixed networks as well. For this reason, it is deemed necessary to extend the application of rules imposed on audiotext services to value-added services based on message sending.

In fact, in this type of services the advertisement is frequently the only source of information available to the consumer, and it is thus indispensable to reinforce the means of protection and safeguard of the latter's rights to information.

On the other hand, this type of services is associated to aggressive advertising, frequently aimed at minors, and sometimes prone to call into question rights and interests protected by law.

In this type of services, the consumer sends a message to a short number that is generally not allocated to any service of the national numbering plan and, therefore, not attached to any obligations.

In addition, value-added SMS and MMS services do not imply a single supply contract, but also continuous supply contracts, and generally assume distance contracts, which makes consumers especially vulnerable, given the target audiences these services are aimed at, who for their age or naivety, are not always aware of the existence of a contract or its conditions, realising this only when confronted with the respective costs.

Moreover, experience shows that the consumer finds it difficult to identify the provider and its physical residence, which makes the termination of the contract a tricky and lengthy task, to the obvious detriment of the consumer, who is not able to terminate the services.

On the other hand, in the scope of the European Conference of Postal and Telecommunications Administrations, Recommendation ECC (06)03 was approved concerning this type of messages, recommending the adoption of measures of tariff transparency, barring mechanisms and the inclusion of these services in national numbering plans, justifying the need to establish a regulatory framework.

Finally, institutional references of the statutory instrument are updated, and applicable fine amounts, which correspond to values set out by Law no. 95/2001 of 20 August, are converted from escudos to Euros.

The Conselho Nacional do Consumo (National Consumer Council) was heard.

On an optional basis, the following bodies were also heard: the Associação Portuguesa para a Defesa do Consumidor, União Geral de Consumidores, Associação Portuguesa de Consumidores dos Media and ICP - Autoridade Nacional de Comunicações.

Therefore:
Pursuant to article 198, paragraph 1 a), of the Constitution, the Government hereby decrees the following:

**Article 1**

**Amendment to Decree-Law no. 175/99, of 21 May**

Articles 1, 2 and 2-A of Decree-Law no. 175/99 of 21 May, as amended by Decree-Law no. 148/2001 of 7 May, and by Law no. 95/2001, of 20 August, are hereby amended to read as follows:

«**Article 1**

**Subject-matter and scope**

1 - This statutory instrument governs the advertising of audiotext services and value-added services based on message sending.

2 - ...

3 - Value-added services based on message sending shall be deemed to mean information society services provided through a message supported on electronic communications services which imply an immediate or delayed payment from the consumer of a value which is added to the price of the electronic communications service, in return for the provision of the transmitted contents, namely for the information service, entertaining service, or other.

**Article 2**

**Advertising**

1 - ...

2 - Advertisements shall indicate the identity or company name of the provider, the content of the service and the respective cost, according to rules for indication of prices set out in Decree-Law no. 177/99, of 21 May, as amended by Law no. 95/2001 of 20 August.

3 - The advertising aimed at minors of services covered by this Decree-Law is prohibited, regardless of the form and advertising medium, namely advertisements in publications, recordings, broadcasts or any other type of communication specifically aimed at minors.

4 - ...

5 - ...

6 - ...

7 - Information on prices, referred to in paragraph 2, shall be supplied to the consumer in the same print, as far as type and size are concerned, as that used to disclose the telephone number of the service and, as regards television advertisements, this information must be displayed during the whole advertisement.

8 - Any communication that, either directly or not, aims to promote the provision of services covered by this Decree-Law shall expressly identify its commercial nature, in clear lettering, refraining from taking a content or form that may induce the recipient to conclude that a personal message has been conveyed.

**Article 2-A**

[...]

1 - Providers of services covered by this Decree-Law that hold competitions through the audio-text system or value-added services based on message sending must inform the user of all conditions related to the competition conduct.
2 - Rules related to the competition conduct may not be supplied to the user through networks of audio-text services or value-added services based on message sending.

3 - ...

4 - Without prejudice to the adoption of other means of a similar effect, the rules related to the conduct of the competition through the audiotext system shall be conveyed to the consumer through a fixed telephone network line, subject to the tariff system in force, the respective number being disclosed in the advertisement.

**Article 2**

*Amendment to Decree-Law no. 177/99, of 21 May*

Articles 1 to 10 and 12 to 14 of Decree-Law no. 177/99 of 21 May, as amended by Law no. 95/2001 of 20 August, are hereby amended to read as follows:

«Article 1

[...]

This statutory instrument governs the access to and the provision of audiotext services and value-added services based on message sending.

Article 2

[...]

1 - ...

2 - Value-added services based on message sending shall be deemed to mean information society services provided through a message supported on electronic communications services which imply an immediate or delayed payment from the consumer of a value which is added to the price of the electronic communications service, in return for the provision of the transmitted contents, namely for the information service, entertaining service, or other.

Article 3

[...]

The pursuit of the activity of provider of audiotext service and of value-added services based on message sending must be registered pursuant hereto.

Article 4

[...]

1 - Natural or legal persons that intend to provide services covered by this Decree-Law must register with ICP - Autoridade Nacional das Comunicações (ICP-ANACOM).

2 - ...

3 - For the purposes of paragraph 1, an application shall be submitted to ICP-ANACOM attaching a certificate of the full record of the registration and of all registrations in effect at the competent company registrar, or in alternative the code of access to the permanent certificate that enables verification of the referred particulars.

4 - ...

5 - ICP-ANACOM shall make available in its website a list of registered providers including the following information:

   a) Name, address and other physical or electronic contacts of the service provider;
b) Detailed description of services provided;
c) General conditions of service provision.

**Article 5**
Commencement of the provision

1 - ...
2 - ...
   a) ...
   b) General conditions of service provision;
   c) [Former point b].
   d) [Former point c].
3 - ...

4 – Registered companies must communicate to ICP–ANACOM, within five days at the most, any alteration to particulars previously supplied and mentioned in paragraph 2.

**Article 6**
[...]

1 – Service providers shall enjoy the following rights:
   a) ...
   b) ...
2 - Service providers shall comply with the following obligations:
   a) ...
   b) ...
   c) ...
   d) ...

**Article 7**
[...]

1 - Contracts concluded between service providers covered by this Decree-Law and providers of support services shall be put in writing and shall contain the following information:
   a) ...
   b) ...
   c) ...
   d) ...
2 - Where, under the terms of the contract, the provider of support services is responsible for the invoicing and collection of amounts due for the provision of services covered by this Decree-Law, these amounts shall be duly broken down.

3 – The provision of the support service shall not be suspended due to failure to pay services covered by this Decree-Law.

Article 8

1 - ICP-ANACOM shall assign to service providers covered by this Decree-Law different access codes based on the nature and content of the service provided, according to the detailed description of the service provided in the declaration referred to in paragraph 2 a) of article 5.

2 - A specific code must be assigned to:

a) Services declared to have erotic or sexual contents;

b) Services that imply the sending of more than one message or the periodic or continuous sending of messages, with value added per message;

c) Services aimed for donations subject to a different tax regime.

3 – ...

Article 9

Audiotext services pricing information

1 - ...

2 - ...

3 - ...

Article 10

[...]

1 - ...

2 - ...

3 – At the request of the consumer, the support service provider shall block the access of value-added services based on message sending, at no cost to the consumer, and irrespective of the existence of a contract with the service provider, or its termination.

4 – For the purpose of the preceding paragraph, the block shall take place within twenty four hours from the request of the consumer, by means of any durable communications medium, the consumer not being required to pay any sums after this time-limit has expired.

Article 12

[...]
1 - Without prejudice to the following paragraph, it is incumbent upon ICP-ANACOM to monitor if services provided are in conformity with assigned access codes, as well as compliance with article 9 and 9-A.

2 - ...

Article 13

1 - Where the use of the access code assigned in the light of the declaration referred to in paragraph 2 a) of article 5 is found not to be in conformity with the latter, or in the absence of the oral message mentioned in paragraph 2 of article 9, ICP - ANACOM must suspend the use of the access code assigned to the concerned service providers and indicate the necessary remedies, establishing a time limit not exceeding 10 days during which providers must remedy the situation.

2 - (Repealed.)

3 - Where remedies are not put into effect within the deadline, ICP - ANACOM must revoke the registration.

4 - The registration or assignment of new access codes to service providers in the situation referred to in the previous paragraph is prohibited.

5 - The suspension of the use of the access code by the service provider or the cancellation of its registration may be publicised by ICP-ANACOM and shall be communicated to the support service provider.

Article 14

1 - Without prejudice to other applicable penalties, the following acts shall be deemed to be breaches:

a) Provision of services by non-registered companies;

b) Failure to comply with paragraphs 1, 3 and 4 of article 5, paragraph 2 a), c) and d) of article 6, paragraph 3 of article 7, article 9, paragraphs 1, 2, 4, 5 and 6 of article 9-A and article 10.

2 – Breaches provided for herein are liable to fines between €2493.99 and €24939.90 and between 14963.90 and 49879.80, according to whether they were committed by natural or legal persons.

3 - ...

Article 3

Addition to Decree-Law no. 177/99, of 21 May

Article 9-A is hereby added to Decree-Law no. 177/99, of 21 May, and shall read as follows:

«Article 9-A

Conditions for the provision of value-added services based on message sending

1 - Except for services referred to in paragraph 5, prior to the provision of the service, providers shall send to the customer a clear and unambiguous message, supported on the electronic communications service used to provide the service, which shall include:
a) The Identification of the service provider;

b) The nature of the service to be provided, the minimum contractual period, where appropriate, and where a continuous provision in concerned, the means to terminate the contract;

c) The total price due for the service;

d) A request for confirmation of the service demand.

2 - In case of a service which must be provided in a continuous fashion, the information in point c) of the preceding paragraph shall include the price of each received message and the price to be paid periodically.

3 - The absence of a reply to the request for confirmation provided for in point d) of paragraph 1 implies the absence of a contract.

4 - Value-added messages shall not be charged for the engaging of the service or confirmation of service demand.

5 - In the case of voting services, competitions or other services that in a similar way do not require the sending of contents, the sending of messages the contents of which consist in the transmission of the achieved result shall not be charged.

6 - Providers of services referred to in paragraph 2 c) of article 8 shall send to the donor messages with relevant tax information at no cost.

7 - The burden of proof of compliance with duties laid down in this article and of the presentation of the reply referred to in paragraph 3 falls on the service provider.

**Article 4**

**Transitional provision**

1 - Without prejudice to the maintenance of access codes assigned to registered audiotext service providers, ICP - ANACOM shall assign access codes within 15 days from the entry into force hereof to providers of services that integrate concepts of article 2 of Decree-Law no. 177/99 of 21 May.

2 - Providers of services referred to in the preceding paragraph shall use new codes within 90 days from the date of assignment.

**Article 5**

**Legal references**

All references made to «Instituto das Comunicações de Portugal» or «ICP» in Decree-Law no. 177/99 of 21 May, as amended by Law no. 95/2001 of 20 August, shall be understood as referring to «ICP - Autoridade Nacional das Comunicações» or «ICP- ANACOM» pursuant to paragraph 3 of article 1 of Decree-Law no. 309/2001, of 7 December.

**Article 6**

**Republication**

Decree-Law no. 177/99 of 21 May, with the new wording, is hereby republished in annex hereto, being an integral part hereof.

**Article 7**

**Repealing provision**
Paragraph 2 of article 13 of Decree-Law no. 177/99 of 21 May, is hereby repealed.

**Article 8**

**Entry into force**

This Decree-Law takes effect 30 days after the date of publication.


Promulgated on 13 February 2009.

Let it be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Counter-signed on 17 February 2009.

The Prime Minister, José Sócrates Carvalho Pinto de Sousa.