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Portugal

TMT

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This country-specific Q&A provides an overview of tmt laws and regulations applicable in Portugal.

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1. Is there a single regulatory regime that governs software?

No. There are several laws that can be relevant to Software.

However, in Portugal, the main normative source on Software protection is Decree-Law no. 252/94, 20th October, transposing into national law Directive 91/250/EEC of 14 May (meanwhile repealed by Directive 2000/94/EC) on the legal protection of computer programs.

For legal transactions involving Software (e.g. licenses and purchase and sale), general rules of contract law and copyright law may apply. In fact, for this purpose, the rules of contracts provided for in the Portuguese Civil Code (Decree-Law no. 47344/66, 25th November), as well as the rules provided for in the Portuguese Copyright and Related rights Code (Decree-Law no. 63/85, 14th March), will have to be taken into account.

2. How are proprietary rights in software and associated materials protected?

In Portugal, proprietary rights in Software can be protected under Copyright, in particular under the above mentioned Decree-Law no. 252/94, 20th October.

Article 1 of such diploma confers protection analogous to that conferred on literary works to all computer programs with a creative character, determining for the purposes of this protection that the preliminary design material of the computer program is equivalent to the computer program.

Thus, under Portuguese law, computer programs and its associated preliminary materials will be protected, provided that they have a creative character.

The protection itself for computer programs (software) under Article 2(1) of the referred diploma, is for their expression in any form. The expression of the computer program is understood to be the source code, which is the expression of the program in the form of a text written in a programming language, and the object code, which is a text written in a 'machine' language.

Article 2(2) expressly excludes the protection of the ideas and principles underlying any element of the program or its interoperability such as logic, algorithms or programming language.

Under Portuguese Copyright Law, the protection will be automatic from the moment the work, in this case the Software, is created (externalized). Nevertheless, it is possible to obtain a registration on the Software created, which will constitute a legal presumption of ownership of Copyright and in favor of the registrant.

3. In the event that software is developed by a software developer, consultant or other party for a customer, who will own the resulting proprietary rights in the newly created software in the absence of any agreed contractual position?

The general rule under Portuguese Copyright Law for works made on hire is that the copyright holder is presumed to be the intellectual creator or author, unless otherwise stipulated.

However, for computer programs, the rule is reversed.

Indeed, according to article 3(3) of Decree-Law no. 252/94, in the case of computer programs that are made for hire, the copyright is presumed to be held by the recipient of the program, unless otherwise stipulated or unless something else results from the purposes of the contract.

Thus, in Portugal, in the event that a software is developed by a software developer, consultant or other party for a customer, it will be the customer who will own the copyright of software or computer program that was created in the absence of any agreed contractual position.

4. Are there any specific laws that govern the harm / liability caused by Software / computer systems?

No. Besides the general rules of civil and criminal liability under Portuguese Civil Law, there are no specific laws that govern he harm / liability caused by Software / computer systems in Portugal.

5. To the extent not covered by (4) above, are there any specific laws that govern the use (or misuse) of software / computer systems?

Yes. In Portugal there is Law no. 82/2021, which establishes the procedures for monitoring, controlling, removing and preventing access in the digital environment to content protected by copyright and related rights, as well as the administrative procedure to be adopted in the event of unlawful making available of protected content, including the obligations, in this context, of intermediary network service providers, defined in the diploma on electronic commerce in the internal market.

Under the abovementioned diploma, illegally making available content protected by copyright and related rights is considered to be anyone who:

- Without the authorization of the holders of copyright and related rights, communicates, makes available to the public or stores protected content;
- Makes available services or means intended to be used by third parties for the infringement of copyright and related rights, or which are intended to interfere with the normal and regular functioning of the market for works and services; and/or
- Provides services aimed at counteract effective technological character for the protection of copyright and related rights or information devices for the electronic management of rights.

There is also Cybercrime Law (Law no. 109/2009, 15th September), transposing into national law Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems and adapting domestic law to the Council of Europe Convention on Cybercrime.

6. Other than as identified elsewhere in this overview, are there any technology-specific laws that govern the provision of software between a software vendor and customer, including any laws that govern the use of cloud technology?

No.

7. Is it typical for a software vendor to cap its maximum financial liability to a customer in a software transaction? If 'yes', what would be considered a market standard level of cap?

Yes. In Portugal, it is very typical for a software vendor to cap its maximum financial liability to a customer in a software transaction.

There is not exactly a standardized market level of cap, but usually vendors tend to cap their financial liability to the total amount paid for the software transaction or the amount so far paid by the customer over a given period of time (usually 12 months).

8. Please comment on whether any of the following areas of liability would typically be excluded from any financial cap on the software vendor's liability to the customer or subject to a separate enhanced cap in a negotiated software transaction (i.e. unlimited liability): (a) confidentiality breaches; (b) data protection breaches; (c) data security breaches (including loss of data); (d) IPR infringement claims; (e) breaches of applicable law; (f) regulatory fines; (g) wilful or deliberate breaches.

a. confidentiality breaches – it depends on what is agreed, in particular if there is a specific NDA agreement, but typically it is included in the financial cap on the software vendor´s liability.
b. data protection breaches – it depends on what is agreed, but typically this is excluded from the financial cap on the software vendor´s liability.
c. data security breaches (including loss of data) – it depends on what is agreed, but typically this is excluded from the financial cap on the software vendor´s liability.
d. IPR infringement claims – this is typically excluded from the financial cap on the

software vendor´s liability.

e. breaches of applicable law – it depends on what is agreed, but typically this is excluded from the financial cap on the software vendor´s liability.
f. regulatory fines – it depends on what is agreed, but typically this is excluded from the financial cap on the software vendor´s liability.
g. wilful or deliberate breaches – under Portuguese Law on general contractual clauses (Decree-Law no. 446/85, 25th October), clauses excluding or limiting liability for default, delay or defective performance in the event of intent or serious misconduct are absolutely prohibited. This means that wilful or deliberate breaches should always be excluded from the financial cap on the software vendor´s liability.

9. Is it normal practice for software source codes to be held in escrow for the benefit of the software licensee? If so, who are the typical escrow providers used?

Although there are mechanisms for software source codes to be held in escrow, this not a very common practice in Portugal.

Nevertheless, the typical escrow provider in Portugal is ASSOFT (Portuguese Software Association).

10. Are there any export controls that apply to software transactions?

Yes, there are.

In Portugal, the export controls on software transactions are made under the “dual-use and technologies” regime provided for in Regulation (EC) 428/2009 and Decree-Law no. 130/2015. According to these diplomas, dual-use goods and technologies are any goods, including software and technology, which can be used for both civil and military purposes, including all goods which can be used for non-explosive purposes or in any way assist in the manufacture of nuclear weapons or nuclear explosive devices.

Operators involved in export transactions of such goods should apply for their Export Licenses, and pay particular attention to any unusual procedures (in international trade transactions) by their customers, as well as to the final destination and end-use of the goods and technologies to be exported.

11. Other than as identified elsewhere in this questionnaire, are there any specific technology laws that govern IT outsourcing transactions?

There are no specific regulations under Portuguese law which govern IT outsourcing transactions in particular.

12. Please summarise the principal laws (present or impending), if any, that protect individual staff in the event that the service they perform is transferred to a third party IT outsource provider, including a brief explanation of the general purpose of those laws.

The outsourcing of services by a company is a reasonable ground for collective dismissal or extinction of the employment position. Specifically, it is part of the concept of structural ground set out in paragraph 2(b) of Article 359 of the Labour Code, i.e. for reasons of “economic and financial unbalance, change of activity, restructuring of the production organization or replacement of dominant products”, as long as it is duly justified and complies with the legally stipulated procedure.

However, with the most recent amendments to the Labor Code, in force since May 2023, Article 338-A has forbidden the outsourcing of services, stating that “it is not allowed to resort to the acquisition of external services from a third party to meet the needs that were ensured by an employee whose contract was terminated in the previous 12 months by collective dismissal or dismissal for termination of employment”, which turns out to be contradictory regarding the existing rules on the grounds for collective dismissal and termination of employment.

In addition, the breach of this provision constitutes a very serious administrative offense imputable to the beneficiary of the acquisition of services, which may lead to a penalty the amount of which varies according to the turnover of the company and degree of guilty.

Since then, the incorporation of this provision in the Labor Code has been subject of discussion, namely regarding its constitutionality, opposing, of course, two principles that collide in this matter: the right to private property and freedom of enterprise against the principle of human dignity and job security, both constitutionally provided.

13. Which body(ies), if any, is/are responsible for the regulation of telecommunications networks and/or services?

The Autoridade Nacional de Comunicações ("ANACOM") is the national regulatory authority (NRA). ANACOM is responsible for the regulatory, supervisory, monitoring and sanctioning functions provided for in the law and its statutes (provided for in Decree-Law no. 39/2015, of 16 March).

As a regulatory authority, ANACOM has, among others, the following attributions:

- To promote competition in the provision of networks and services;
- Ensuring access to networks, infrastructures, resources and services;
- Ensuring the freedom to provide networks and services;

14. Please summarise the principal laws (present or impending), if any, that govern telecommunications networks and/or services, including a brief explanation of the general purpose of those laws.

The main law governing electronic communications is Law no. 16/2022 of 16 August ("**Electronic Communications Law**"), which resulted from the transposition of Directives 98/84/EC, 2002/77/EC and (EU) 2018/1972 ("**European Electronic Communications Code**"). This law establishes the legal regime applicable to electronic communications networks and services, associated facilities and services, the management of radio spectrum and numbering resources, as well as certain aspects of terminal equipment, and defines the competences of the national regulatory authority (NRA) and other competent authorities in these areas.

In addition to the Electronic Communications Law, certain matters are regulated by lex specialis, such as, among others, the following:

- Law no. 41/2004, August 18, concerning the processing of personal data and the protection of privacy in electronic communications (hereinafter "**E-Privacy Law**").
- Decree-Law no. 151-A/2000, of 20 July, which establishes the regime applicable to the licensing of radiocommunications networks and stations and the supervision of the installation of such stations and the use of the radio spectrum, as well as the definition of the principles applicable to radio fees, the protection of exposure to electromagnetic radiation and the sharing of radiocommunications infrastructures.
- Law No. 99/2009, of 04 September, which establishes the regime applicable to administrative offences in the communications sector. This law defines the responsibilities, the factors for determining the applicable sanction, as well as the amounts of the fines depending on the offence in question.
- ANACOM, as the national regulatory authority, issues and approves certain Regulations that should also be considered.

15. Which body(ies), if any, is/are responsible for data protection regulation?

The entity responsible for monitoring the application of the data protection rules and principles in Portugal is Comissão Nacional de Proteção de Dados ("**CNPD**"), which is the Portuguese Data Protection Supervisory Authority. The organisation and functioning of CNPD is governed by Law 43/2004, of 18 August, and also by the rules laid down in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("**GDPR**"). According to the latter the CNPD is entitled to:

- *order the Controller and the Processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;*
- *carry out investigations in the form of data protection audits;*
- *obtain, from the Controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;*
- *obtain access to any premises of the Controller and the Processor, including to any data processing equipment and means.*

16. Please summarise the principal laws (present or impending), if any, that that govern data protection, including a brief explanation of the general purpose of those laws.

In Portugal the processing of personal data is governed

by European Union Legislation and by National legislation.

The legal framework for personal data protection in Portugal is that resulting from the direct application of the GDPR. In turn, one shall consider Law no. 58/2019, of August 8, which ensures the implementation in Portugal of the GDPR (hereinafter "Portuguese Data Protection Law").

Apart from the GDPR and the Portuguese Data Protection Law, which set the general framework applicable to the processing of personal data, certain situations are governed by lex specialis, among which we would like to point out:

- Law no. 41/2004, August 18, concerning the processing of personal data and the protection of privacy in electronic communications (hereinafter "E-Privacy Law"). This law covers the processing of personal data for e-marketing purposes, as well as the use of cookies and similar technologies.
- Law no. 7/2009, February 12 (hereinafter "Portuguese Labor Code"), which provides for special rules for the processing of personal within a labor relationship.
- Law no. 59/2019, of 8 August, which transposes into the Portuguese law the Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016). In general this law sets forth the rules on the processing of personal data by competent authorities for the purpose of prevention, detection, investigation or prosecution of criminal offenses or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

Apart from the above, Controllers/Processors shall also take into consideration cybersecurity laws. In particular, the following shall be observed:

- Law no. 46/2018, of 13 August, which transposes to the Portuguese legal framework Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016, thus establishing the legal framework for cyberspace security applicable to public administration entities, critical infrastructure operators, operators of essential services, digital service providers and other entities using networks and information systems.
- Decree-Law no. 65/2021, of 30 July that regulates the law mentioned in the previous point.

17. What is the maximum sanction that can be imposed by a regulator in the event of a breach of any applicable data protection laws?

As per article 83 of the GDPR and the Portuguese Data Protection Law, the maximum fine ranges from EUR 10m to EUR 20m or, in the case of an undertaking, 2% to 4% of the total worldwide annual turnover of the preceding financial year, respectively, whichever is higher.

The amount of an administrative fine will vary depending on the circumstances of each individual case and shall be effective, proportionate and dissuasive.

The European Data Protection Board has issued Guidance on the calculation of fines in its Guidelines 04/2022 of 12 May 2022.

18. Do technology contracts in your country typically refer to external data protection regimes, e.g. EU GDPR or CCPA, even where the contract has no clear international element?

Apart from some situations where Data Processing Agreements may refer to other data protection regimes, it is not common to include references to external data protection regimes in technology contracts.

19. Which body(ies), if any, is/are responsible for the regulation of artificial intelligence?

The body responsible for regulating artificial intelligence has not yet been designated in Portugal.

Once the EU Regulation laying down rules on Artificial Intelligence ("**Artificial Intelligence Act**") is adopted, member states will have to designate a competent supervisory authority to oversee the implementation of the Artificial Intelligence Act.

20. Please summarise the principal laws (present or impending), if any, that that govern the deployment and use of artificial intelligence, including a brief explanation of the general purpose of those laws.

There is currently no local legislation applicable to the

deployment and use of artificial intelligence.

Law no. 27/2021, of 17 May, which establishes the Portuguese Charter of Human Rights in the Digital Age, refers to the use of artificial intelligence and robots (Article 9), providing that their use must be guided by respect for fundamental rights, ensuring a fair balance between the principles of explainability, security, transparency and accountability, taking into account the circumstances of each specific case and establishing processes aimed at avoiding any prejudice and forms of discrimination. It is further provided that decisions with a significant impact on the sphere of recipients that are taken through the use of algorithms must be communicated to stakeholders, be subject to appeal and be auditable.

The deployment and use of artificial intelligence will be governed by the European Union's Artificial Intelligence Act.

21. Are there any specific legal provisions (present or impending) in respect of the deployment and use of Large Language Models and/or generative AI?

Currently, no. The European Union's Artificial Intelligence Act will provide for specific rules governing foundation models, including large language models and generative AI systems.

22. Which body(ies), if any, is/are responsible for the regulation of blockchain and / or digital assets generally?

Portugal has recently implemented the EU Regulation 2022/858 of the European Parliament and of the Council, dated May 30th, 2022 through the Decree-Law 66/2023, published on 8 august and that entered into force on the day following its publication. Under the new regime, the Portuguese Securities Market Commission ("**CMVM**") has been designated as the competent national authority for supervising matters related to the Blockchain (distributed ledger technology – DLT).

Moreover, the Bank of Portugal is the Portuguese competent authority responsible for registering entities intending to act as virtual assets service providers and verifying compliance with the legal and regulatory provisions governing the prevention of money laundering and terrorist financing ("**AML/CFT"**).

Furthermore, the European Securities and Markets Authority (referred to as "**ESMA**") will assume a pivotal role in ensuring regulatory harmonization and will acquire comprehensive insights into noteworthy cryptocurrency providers in accordance with the implemented MiCA regulation. Lastly, the European Banking Authority (abbreviated as "**EBA**") will oversee issuers of noteworthy asset-referenced tokens and substantial stablecoins.

23. What are the principal laws (present or impending), if any, that govern (i) blockchain specifically (if any) and (ii) digital assets, including a brief explanation of the general purpose of those laws?

The realms encompassing blockchain, cryptocurrencies, and other digital assets and securities have witnessed swift advancements in the formulation of novel regulations and legislations both at the European and national levels. As recently as May 2023, the European Parliament and the European Council have approved the Regulation on Crypto-Asset Markets (EU) 2019/1937 (referred to as "**MiCA**"), designed to heighten investor safeguards and bolster the operational efficiency of financial markets. Anticipated to achieve full enforceability in early 2025, MiCA establishes guidelines for the public issuance and inclusion of cryptocurrencies and stablecoins, necessitating an authorization process. It's worth noting that the scope of the regulation excludes transactions concerning Non-Fungible Tokens ("**NFTs**") and Security Tokens.

As per above, In Portugal, the recently approved Decree-Law No. 66/2023 of August 8th implements Regulation (EU) 2022/858 of the European Parliament and of the Council, dated May 30th, 2022, concerning a pilot regime for market infrastructures based on distributed ledger technology ("**DLT**"), also known as the DLT Regulation. The pilot regime for market infrastructures based on DLT, with Blockchain being the prominent model, aims to provide greater legal certainty and flexibility to market participants intending to operate a DLT-based market infrastructure by defining consistent requirements for this purpose. The authorizations granted under the DLT Regulation will enable market participants to operate a DLT-based market infrastructure and offer their services across all Member States.

In relation to digital assets, the Portuguese AML Law approved by the Law 83/2017 has been amended in 2020 (through Law 50/2020, which implemented in Portugal AMLV) and introduced the concept of digital assets, defined as "*a digital representation of value that is not necessarily linked to a legally established currency*

and does not have the legal status of a fiat currency, security or other financial instrument, but is accepted by natural or legal persons as a medium of exchange or investment and can be transferred, stored and traded electronically"; and included an obligation of a prior registration with the Bank of Portugal for the entities pursuing activities in digital assets for the purposes of supervision by the Bank of Portugal, although this supervision is limited to AML/CFT purposes and does not extend to other areas of a prudential, market conduct or any other nature. The following activities or operations with virtual assets include:

- exchange services between virtual assets and fiat currencies or between one or more forms of virtual assets;
- transfer services of virtual assets;
- safekeeping and/or administration of virtual assets or instruments that enable the control, ownership, storage or transfer of such assets, including private encrypted keys.

Besides the above, digital assets are not regulated in Portugal, unless they qualify as e-money (in which case activities may be subject to the PSD II Law, approved by Decree-Law 91/2018) or as security (in which case they will be subject to the Portuguese Securities Code, approved by Decree-Law No. 486/99, of 13 November).

Finally, the concept of digital assets has also be included in Portuguese Law under the Portuguese Budget Law, approved by Law No. 24-D/2022, 30 December, and considered as cryptoassets "*any digital representation of value or rights that can be transferred or stored electronically using distributed ledger technology or other similar technology is considered to be cryptoactive*" for taxation purposes.

24. Are blockchain based assets such as cryptocurrency or NFTs considered "property" capable of recovery (and other remedies) if misappropriated?

NFTs are not regulated under Portuguese Law. The position of the regulators, in accordance with the EU guidelines on the matter, is that NFTs do not qualify as virtual assets for AML purposes nor they have in general the characteristics of a security. For the above, the current legislation does not consider NFT as property.

However, cryptocurrencies are pieces of digital information ("**strings of data**") generated and registered within a decentralized virtual monetary system: while they are obviously not tangible things, they are not simply the same as intangible things that are the subject of intellectual or industrial property (e.g. software, databases, industrial property, etc.), nor to credits (like bank and electronic currencies, which are also digital in nature), nor even to mere payment instruments (like, for example, credit titles).

The fundamental question that arises is whether and to what extent it is possible to recognize digital monetary assets ("**value data**") as things ("**res**") in the sense of civil law (Article 202 of the Portuguese Civil Code), subject to property rights, as well as to extend to the holders of virtual currencies some of the traditional institutes of protection of legal holders ("maxime", ownership and claim or judicial seizure and enforcement). Which will also have an impact on the use of these assets as collateral and consequences under insolvency proceedings.

This is a controversial matter that is already being discussed by the doctrine, abroad and in Portugal, being expectable for new developments to be seen in the Portuguese doctrine and jurisprudence.

25. Which body(ies), if any, is/are responsible for the regulation of search engines and marketplaces?

With the adoption of the Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 ("**Digital Services Act**"), each Member State will have to designate a Digital Services Coordinator, who will oversee other entities covered by the Digital Services Act that will co-operate with the European Commission through a European Digital Services Council. EU Member States will have to appoint national Digital Services Coordinators by 17 February 2024, the general date of application of the Digital Services Act.

For very large online platforms (VLOPs) and very large online search engines (VLOSEs), the European Commission is the competent supervisory authority that oversees and enforces the provisions of the Digital Services Act.

Currently, the Food and Economic Safety Authority ("**ASAE**") is the competent authority for monitoring compliance with e-commerce rules.

26. Please summarise the principal laws (present or impending), if any, that govern search engines and marketplaces, including a brief explanation of the general

purpose of those laws.

Search engines and marketplaces will be regulated by the Digital Services Act, which will become fully enforceable and applicable on 17 February 2024. This Regulation introduces new obligations for online platforms to reduce harm and tackle online risks, introduces solid protection of online users' rights and establishes a new single transparency and accountability framework for digital platforms.

Search engines are further regulated by Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 ("**Digital Markets Act**") which is fully applicable since 2 May 2023. The Digital Markets Act does not apply to all digital platforms, but only to those qualified as "core platform services" ("CPS"), which includes services such as search engines, web browsers, virtual assistants, video sharing platforms, among others. The scope of the Digital Markets Act is further limited to platforms designated as "gatekeepers". The gatekeeper must (a) have a size that impacts the EU internal market; (b) provide a core platform service which is an important gateway for business users to reach end users; and (c) enjoy an entrenched and durable position in the market. The Digital Markets Act thus establishes a system of prohibitions and multiple positive obligations for gatekeepers.

Currently, some local legislation is applicable to marketplaces, such as:

- Decree-Law no. 84/2021, of 18 October, which regulates consumer rights in the purchase and sale of goods, digital content and services. This Decree-Law provides that the online marketplace provider who, acting for purposes related to his activity, is a contractual partner of the trader who makes the good, digital content or service available is jointly and severally liable to the consumer for the lack of conformity of those under the law (Article 44). This diploma also provides for a special information duty for the online marketplace provider who is not a contractual partner of the trader providing the good, digital content or service, being required to make certain information available to consumers.
- Decree-Law no. 24/2014, of 14 February 2014, on consumer rights in distance and off-premises contracts. This diploma provides for specific additional information requirements for contracts concluded on online marketplaces applicable to online marketplace providers (Article 4a), as well as specific rules applicable to situations where the online marketplace provider offers access to consumer reviews (Article 4b).

27. Which body(ies), if any, is/are responsible for the regulation of social media?

In the case of very large social media platforms (which are subject to the Digital Services Act) the main Supervisory Authority to be considered is the EU Commission. In addition, other laws that also apply to social media sites are enforced by several Portuguese authorities. For instance, laws regulating hate speech and other illegal conduct on social media platforms are enforced by the Portuguese Public Prosecutor.

28. Please summarise the principal laws (present or impending), if any, that govern social media, including a brief explanation of the general purpose of those laws?

Under the Decree-Law 7/2004, of 7 January (which transposed to the Portuguese legal framework the e-Commerce Directive), hosting service providers (as social media platforms) are generally not required to monitor third party information hosted by them. However, hosting service providers will be liable for the content they host in case they become aware of illegal activities or third-party information, and to not take the necessary actions to remove the information or to disable access to it without undue delay ("**Safe-Harbor**").

These general principles will continue to apply under the newly enacted Digital Services Act, which set forth additional obligations for online platforms and search engines.

In addition, with regard to content moderation obligations we must also consider other general provisions, such as the Portuguese Criminal Code, Industrial Property Code, Portuguese Advertising Code.

In respect of copyright-infringing content, Article 175-C (1)(a), (b) and (c) of the Portuguese Copyright and Related rights Code, which transposes Article 17(4) (a), (b) and (c) of Directive (EU) 2019/790 (**'DSM' Directive**), stipulates certain obligations (best efforts, content blocking and stay down) for powerful platforms that host and make available to the public large quantities of copyrighted materials, in order to avoid a direct liability for copyright-infringing user-uploaded

content. This means that the “Safe-Harbor” privilege conferred by e-Commerce Directive, no longer applies in these matters.

Lastly, on shall also consider the provision of the Digital Markets Act (**DMA**) which also applies to (large) social networking sites and imposes several obligations on them (please refer to question no. 26).

29. What are your top 3 predictions for significant developments in technology law in the next 3 years?

The major predictions for developments in technology law are likely to result from the local transposition and corresponding adoption of the recently published European Acts, mainly:

- Generative Artificial Intelligence – development of laws and regulations on the use of generative artificial intelligence in the various fields (e.g., software transactions, marketing and advertising, social media, search engines and marketplaces).
- Single market for data – the creation of common data spaces and development of the data economy resulting from the adoption of the Regulation on European data governance and the Data Act.
- Cybersecurity – the strengthening of cybersecurity rules through the transposition into local law of the NIS 2 Directive, which will bring a broader and more harmonized set of cybersecurity rules for all organizations carrying out their activities in the European Union.

30. Do technology contracts in your country commonly include provisions to address sustainability / net-zero obligations or similar environmental commitments?

No. In Portugal, it is not very common to include in technology contracts provisions to address sustainability / net-zero obligations or similar environmental commitments, even though ESG (environmental, social and corporate governance) concerns are becoming part of companies’ compliance obligations.

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