

Letter dated:
Brussels, 9 July 2003

From:
The Portuguese Permanent Representation

To:
Nikolaus Van Der Pas, Director General, EAC DG

Subject: Recommendation 98/560/EC

Ref.: C-690

Further to your letter D(2003)11339 of 5 June 2003, please find enclosed the response of the Portuguese authorities to the questionnaire on the above recommendation.

Please accept etc.

Encl.: 1

Questionnaire concerning the Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audio-visual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC).

Internet

1. In Portugal, no association of internet service providers has yet been established. However, one of the main Portuguese providers recently joined the *Application Service Provider Industry Consortium* (ASPIC). This is an international organisation set up to regulate the application service provider (ASP) industry, in particular by promoting good practices.
2. As no internet service provider association exists, no code of conduct has been drawn up.
3. See preceding reply.
4. There are no legal requirements specifically for internet service providers on how to deal with illegal or harmful content accessed over the internet. However, Portugal is in the process of transposing into its national legislation Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market. In accordance with this Directive, provisions will be implemented, among other things, to regulate the liability of intermediary service providers for the information they transmit, store or provide access to. In addition, conditions will be laid down for the exemption of service providers from liability for the possibly harmful content of the messages they carry.
5. There are no specific requirements for the moment. However, where internet service providers are alerted to the existence of sites with illegal content offensive to human dignity, they take action to filter them. Such filtering is always specific, in response to the detection or warning of the illegal nature of the content. The transposition into national legislation of Directive 2000/31 (see previous reply) will lay down rules in this regard.
6. There is no hotline for reporting harmful or illegal content.
7. As the list of problematic content is not public, it is not possible to assess the proportion of illegal content hosted outside Portugal or the EU.
8. No measures or initiatives have been taken to raise public awareness of hotlines, since, as mentioned in 6 above, none have yet been created.
9. As there are no hotlines, no estimation has been made of their effectiveness in reducing the extent and accessibility of harmful or illegal content.
10. No specific efforts have been made to develop a national filtering and rating system for internet content. In Portugal, the international filtering and rating systems are used.

There are two distinct currents of opinion regarding the filtering of internet content: the first calls for the exemption of internet service providers from any liability for the

content they host, i.e. the law cannot specifically target providers; the second advocates strict liability legislation for hosters of sites. In this regard, it should be noted that there is a law on computer crime which prohibits certain illegal acts such as, for example, the circulation of photographs of minors.

11. Internet service providers are not obliged to inform subscribers about available filtering and rating systems or age verification software.
12. No measures have been taken to raise awareness of safer internet use.
13. There is no indication that the growth of the internet has been slowed by public fears of harmful or illegal content accessed over the internet. There is little public awareness of the issues relating to harmful or illegal content, while, on the other hand, the number of internet users is growing continuously.
14. On 23 November 2001, Portugal signed the Council of Europe convention on cybercrime in Budapest. Its implementation in Portugal will call for some changes in the law in various areas, such as for example the recording of traffic data for criminal investigation purposes or the amendment of the penal provisions governing child pornography. In addition, the transposition of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector will introduce new rules on important aspects relating to evidence, such as the recording of traffic data.
15. It is not known whether the existing regulation covers transmission via mobile telephones, in particular as concerns UMTS.
16. To prevent the use of terms considered to be unacceptable in online chat groups, chat filters may be used or chat rooms may be moderated or managed. So far, it is not known whether such measures are now widespread or, in contrast, whether they are still isolated practices with little or no impact on surfers.
17. The introduction of the internet in schools has led to the establishment of UARTE (Unidade de Apoio à Telemática Educativa [support unit for educational information technology] <http://www.uarte.mct.pt>). This unit has established support programmes for the guidance of pupils and teachers. Pupils are encouraged to get to know the internet, while teachers have the educational information needed for contact with the internet. The schools themselves may use this infrastructure to create school pages and newsletters on the world wide web. However, these measures are more oriented to the technical aspects (use of the internet), while ignoring the skills needed for responsible and safe use of the new media. The initiatives that do exist for the responsible use of media have focused on the traditional media. One example is the magazine “Público”, which has for years been promoting a project “Público na Escola”, designed to encourage critical use of and reflection on the media among schools, teachers and pupils.
18. There is no specific regulation or self-regulation concerning online media, including the right of reply. Online media come under the legislation governing the traditional media, both being regulated by the same regulatory bodies. Further, no concrete cases are known in Portugal where cross-border issues have arisen regarding the right of reply online.

Where this issue is concerned, it is important for the Member States to follow the development of the Council of Europe's draft recommendation on the right of reply in the online media.

Broadcasting

19. Following the proposal of the national regulatory body (AACS — *Alta Autoridade para a Comunicação Social*), the three Portuguese television broadcasters signed, on 9 July 1997, the first agreement providing for self-regulation of the “depiction of violence on television”, which governs the symbols used to indicate the degree of violence in television programming, the appropriateness of promotional spots in terms of the vulnerability of each viewing public and specific information on child programming. Still in force, the agreement was signed by the public service broadcaster RTP and the two private broadcasters SIC and TVI and has been implemented on the various channels belonging to the three broadcasters, including those transmitted by cable and satellite.

The self-regulation agreement has the following main objectives:

- the introduction of a symbol to identify violent programmes or those likely to affect more sensitive viewing publics;
- the publication of the above symbol in notices concerning programming, including promotional spots;
- the exclusion of scenes of violence from promotional spots transmitted before 22:00 hours;
- the publication of appropriate information on child and juvenile programming to facilitate appropriate guidance on the part of parents and educators.

Subsequently, on 25 March 1998, the implementation of the agreement was given a positive assessment by the AACS, in particular regarding the following aspects:

- duration of the showing of the symbol indicating violence;
- showing of the symbol at the start of each part of a programme/film;
- information on the depiction of violence and the corresponding symbols, not just on the channels themselves but also on the part of other information providers publishing television programming.

On 18 September 2001, the same broadcasters (RTP, SIC and TVI), meeting under the auspices of the AACS, signed a protocol on the safeguarding of human dignity in television programming with particular reference to the regulation of “reality shows”.

The above agreement and protocol cover not only programmes specifically intended for minors and young people but also television programming as a whole, including the showing of promotional spots for films and series.

20. Although there is no code of conduct as such, the agreement and protocol mentioned in the previous reply establish a set of principles, complementing general law, for the protection of minors and the broadcasting of harmful content.

Currently being drawn up between the two private television channels (SIC and TVI) is a code of conduct on the handling of sensitive matters, which will include clauses for the protection of minors (protection of identity and non-publication of the names and images of children at risk or in danger). The public broadcaster (RTP) is likewise interested in signing up to the code of conduct.

The definition of television broadcasting in the Television Without Frontiers Directive includes advertising. Where this is concerned, the *Istituto Civil da Autodisciplina da Publicidade* (ICAP) adopted a code of conduct in 1991 incorporating a section devoted to children and young people. It should be noted that the public broadcaster (RTP), the two private television broadcasters (SIC and TVI) and the cable broadcaster TV Cabo Interactiva are members of ICAP.

21. The Television Act requires content harmful to children, adolescents or sensitive viewing publics to be preceded by an explicit warning and accompanied by an appropriate identification throughout the broadcast. However, the law makes no reference to the characteristics of such identification.

The self-regulation agreement of 1997, mentioned in reply 19, introduced a warning icon for violent or potentially harmful television programmes, called the “common symbol”. This icon — visual only — continues to be used on channels operated by the signatories to the agreement (RTP, SIC and TVI).

The current legislation and the self-regulation agreement thus do not call for an acoustic warning.

It is not known whether such measures are effective, as this greatly depends on the responsibility and awareness of parents and educators with regard to this problem. Effectiveness will depend on the degree of parental involvement, since it is not sufficient to oblige broadcasters to implement such measures if minors are then able to watch such programmes without any parental guidance, control or verification.

22. Portuguese television broadcasters do not use filtering devices to prevent minors from watching harmful programmes, particularly as mechanisms are not feasible with analogue television broadcasting.

However, the interactive television service (iTV), available on the cable network, already provides certain content intended for adults where filtering to protect minors is possible by means of identification codes used with a credit card to request the content. However, this service is still in the initial stages and has only a limited number of subscribers, so its impact and effectiveness cannot as yet be evaluated. Most parents and guardians still have little or no knowledge of the existence and working of such devices. However, given the growing importance attached to the protection of minors in Portuguese society, particularly where the media are concerned, we believe that the problem of filtering, as with other issues touched upon by the recommendation, will acquire greater prominence in Portuguese public opinion.

23. In addition to the information given in reply 17, one of the private television broadcasters has already taken steps to publicise the operation and practice of television. The broadcaster in question has produced a video entitled “*ABC de Televisão*” (the ABC of television), with the support and participation of a wide network of Portuguese schools. For its part, the public broadcaster has broadcast programmes to improve media literacy, in particular to teach children how to make responsible use of television.

Video game software

24. Since 2001, Portugal has applied to computer games the same legislative system governing video cassettes and DVDs. Under the current legislation (Decree-Law No 39/88 of 6 February 1988), all games intended for commercial distribution (sale or hire) must first receive an age rating from the Ministry of Culture's *Comissão de Classificação de Espectáculos* (CCE — entertainment rating commission). The CCE also rates films, videos and theatre performances. The protection of minors is directly linked to the programme for combating piracy, since anyone distributing games, video cassettes or DVDs has to prove that these are legal. The age ratings for games are the same as for cinema and videos (over 4, 6, 12, 16 and 18 years of age), plus the special ratings “quality” and “pornographic”. After rating, a sticker containing the title and the rating is affixed to the game boxes.
25. The current system in Portugal for rating video games is legally compulsory and is monitored by the inspectorate-general of cultural activities (IGAC) under the Ministry of Culture. However, as the existence of different ratings varying from country to country has caused some confusion among consumers, the CCE has been actively working with the Interactive Software Federation of Europe (ISFE) and has agreed to introduce the PEGI system adopted by most European countries. While maintaining the obligatory system, the CCE therefore uses the PEGI system for games already rated under this self-regulation system.
26. Under the system described in the answer to the previous question, the consumer is properly informed of the content and recommended age rating. As to the actual effectiveness of the system in protecting minors, there are as yet no scientific data to permit any conclusion to be drawn. Although the measures mentioned in replies 24 and 25 provide a good indicator for parents and educators, one of the private television broadcasters considers that their effectiveness is questionable, pointing to cases where minors may acquire — via the internet or commercial establishments — games rated for ages higher than their own without anyone preventing them. The same broadcaster suggests the implementation of measures to restrict access by minors to non-authorised content, along the lines of what happens with alcoholic beverages.
27. Online games are not subject to any regulation and/or self-regulation.

Other content delivery systems

28. Films, video cassettes and DVDs are classified in accordance with the law in force since 1982 (Decree-Law No 396/82 of 21 September 1982). There have not been any recent changes in the system.

General

29. The involvement of consumer associations, voluntary associations and non-governmental organisations in the implementation of the Recommendation has left much to be desired. In future, the aim is to attach greater importance to this question, especially as Portuguese public opinion is now more aware of and alert to issues connected with the protection of minors and young people.
30. As noted in replies 24 and 28, there is no lack of coherence between the rating systems for films, video cassettes, DVDs and video games. The current rating system

is therefore not considered to be problematic or confusing for consumers. It has proven to be satisfactory and generally accepted. It should be noted that television programmes are not covered by the legislation mentioned in reply 28. On 26 June 2003, the Portuguese parliament approved by a majority a draft law on the rating of television programmes.

31. It is not known whether the efforts made by Portugal with respect to the protection of minors have been followed by scientific boards and specific studies. In addition, there is no knowledge of any voluntary agreements by broadcasters and content providers on the internet.
32. It is not known whether any studies or scientific reports have been produced on this issue in the past two years.