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We have decided to answer the questions all together about Telecommunications Law for a better understanding of the subject.

The so called *private and family life right* is protected by the Portuguese Constitution (art. 26th, nr 1) and article 34 of this Fundamental Law states that correspondence and others ways of private communication cannot be subject to interference by third parties, forbidding the interference in telecommunications. Therefore, all proofs by those means shall be considered void (nr. 8 of art. 32nd, except in the cases refered in criminal procedure law (art. 34th, n° 4 in articulation with the provisions in the numbers 2 and 3 of 18th of the Fundamental Law).

Articles 187th and 188th of the Portuguese Code of Criminal Procedure regulate the terms and conditions of the cases where interception, recording of conversations or communications by phone are legitimate. Article 190 of that Code extends this kind of protection to all kind of conversations or communications transmitted by any technical means different from the phone, such as electronic mail or other forms of transmission of data by *telematic* system and the interception of communications between presents.

Under Portuguese Law only for investigation purposes of crimes punishable with over three years imprisonment is it possible to intercept and to record. It is also possible in the following cases: crimes connected to drugs traffic, guns traffic, related to weapons; explosive engines and materials or similar; smuggling; outrage; threat; coercion; inquiries about private life and disturbance of peace and tranquillity, when committed by telephone.

We must clarify that the Court has the exclusive competence to balance the different values that are present in each case and to order or authorize this kind of acts (art. 269 of the Portuguese Code of Criminal Procedure).

The protection of private life, in particular in the telecommunications sector, is also foreseen in the Portuguese Criminal Code. It typifies as crime the violation of the correspondence or the telecommunications (art. 194th); the interception, tape, register, use, transmission or divulgation of any conversation, communication, or conversation by phone with the purpose to disturb the private life of the others (art. 192nd) or, still, with the intention to disturb someone's tranquillity with phone calls to other's house (art. 190th, nr 2).

The Portuguese Civil Code also protects the private and family life right in reference to Personality Rights, which violation leads to civil responsibility.

The Portuguese Legislator did not forget the devices which allow for correspondence or telecommunication violation. Those who import, manufacture, keep, buy, sell, cede or acquire, transport, distribute, possess any instrument or equipment especially for these purposes may be subject to criminal proceeding. There are some exceptions established by Law or by competent authority (art. 276 of the Portuguese Criminal Code).

The Portuguese Legislator deems as crimes: violation of correspondence and telecommunication secrecy, violation by employees (*funcionarios* - defined in art. 386 of the Portuguese Criminal Code) of mail, telegraphs, telephones or telecommunications services (art. 384). If these *employees* are not specifically authorized, they cannot record or disclose to anybody any kind of communication carried out through telecommunications.

Law nr. 69/98 of October, 28, 1998 - which implemented EC Directive EC/66/97 of December, 15, 1997, concerning personal data protection in the telecommunications sector in addition to the provisions of the Personal Data Protection Law (Law nr 67/98 of October, 26, 1998), which implemented EC Directive 46/95/EC of 1995 - states in its fifth article the obligation of services

suppliers and network operators to guarantee the confidentiality and the secrecy of communications, forbidding the interception without the prior express consent of the users.

As we can see, Portuguese Legislation protects the private communications, regardless of whether they are or not under any kind of encryption system.

Besides the legislative protection mentioned above, any injured person has administrative protection. They can bring claims before the Portuguese Institute of Communications – National Authority of Communications (former National Authority Telecommunications and Mail Sector) or before the National of Personal Data Protection Commission, or even before the courts.

Interference in telecommunications and the use of devices that allow it, except in a few cases, are in general, illegal acts, resulting in criminal, civil and disciplinary responsibility, depending on the case.