

# Marrakesh Treaty Questionnaire – Portugal

## 1. Please indicate the relevant provisions in your national legislation providing for or regulating the limitations and exceptions to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.

In Portugal the relevant provisions providing for or regulating the limitations and exceptions to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled, in accordance with the Marrakesh Treaty, were introduced into national legislation by Law no. 92/2019, published on the 4<sup>th</sup> of September, which in turn transposed “*Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*”.

Law no. 92/2019, of the 4<sup>th</sup> of September, altered four previously existing laws:

- a. The Code of Copyright and Related Rights;
- b. Decree-Law No. 252/94, of the 20<sup>th</sup> of October, concerning the legal protection regime for computer programs;
- c. Decree-Law No. 332/97, of the 27<sup>th</sup> of November, concerning the rental right, the lending right and certain rights related to copyright in the field of intellectual property; and,
- d. Decree-Law No. 122/2000, of the 4<sup>th</sup> of July, concerning the legal protection of databases.

Relevant provisions introduced into the Code of Copyright and Related Rights:

| Relevant Provision   | Means   | Content of provision  |
|----------------------|---|---|
| Chapter II, Title II | Systematic alteration, new Chapter Title and new sections | Chapter II of Title II is renamed "Of the free and permitted use", comprising articles 75° to 82°-C, and is divided into two sections, as follows:<br>i) Section I with the heading “Of the free use” comprising articles 75° to 82°;<br>ii) Section ii with the heading “Of the permitted use” comprising articles 82°-A to 82°-C. |
| Article 75°, no.     | Alteration to previously                                  | Provides that, without the rights holder consent It is lawful to reproduce, to communicate to the public  |

| <b>Relevant Provision</b> | <b>Means</b>       | <b>Content of provision</b>  |
|---------------------------|--------------------|--|
| 2, i)                     | existing provision | (distribute) and to make available to the public in favor of people with disabilities, works that are directly related and to the extent strictly required by these specific disabilities and provided that these uses are not, directly or indirectly, made for profit, without prejudice to the provisions of articles 82°-A, 82°-B and 82°-C; |
| Article 82°-A             | New article        | With the heading “ <i>Definitions</i> ”, includes the definitions of “ <i>work or other material</i> ”, “ <i>beneficiary person</i> ”, “ <i>accessible format copy</i> ” and “ <i>authorized entity</i> ”  |
| Article 82°-B             | New article        | With the heading “ <i>Permitted uses</i> ” establishes the conditions for a lawful use, without the consent of rights holders, of works and other materials with a non-profit purpose, for the benefit of beneficiary persons.   |
| Article 82°-C             | New article        | With the heading “ <i>Authorized entities</i> ” establishes the duties (and respective conditions) of the entities in regards to the use allowed in accordance with the previous articles.   |

Relevant provisions introduced into Decree-Law No. 252/94, of the 20<sup>th</sup> of October:

| <b>Relevant Provision</b> | <b>Means</b> | <b>Content of provision</b>  |
|---------------------------|--------------|--|
| Article 10°, no. 3        | New number   | Establishing that “ <i>The uses allowed for the benefit of blind, visually impaired people or those with other difficulties in accessing printed texts, as provided for in article 82-B of the Code of Copyright and Related Rights, apply to computer programs.</i> ” |

Relevant provisions introduced into Decree-Law No. 332/97, of the 27<sup>th</sup> of November

| <b>Relevant Provision</b> | <b>Means</b> | <b>Content of provision</b>   |
|---------------------------|--------------|---|
| Article 6°, no. 4         | New number   | Establishing that “ <i>The provisions of article 82-B of the Code of Copyright and Related Rights apply to lending, with the necessary adaptations.</i> ” |

Relevant provisions introduced into Decree-Law No. 122/2000, of the 4<sup>th</sup> of July:

| Relevant Provision    | Means             | Content of provision  |
|-----------------------|-------------------|---|
| Article 10°, no.1, d) | New sub-paragraph | Establishing that “ <i>Permitted uses for the benefit of blind, visually impaired people or those with other difficulties in accessing printed texts, provided for in article 82-B of the Code of Copyright and Related Rights</i> ” are exceptions to the copyrights provided in that law.   |
| Article 15°, d)       | New sub-paragraph | Establishing that “ <i>The legitimate user of a database made available to the public may also, without the manufacturer's authorization, extract and/or reuse a substantial part of its content whenever it is a permitted use for the benefit of blind, visually impaired or visually impaired people or those with other difficulties in accessing printed texts, as provided for in article 82-B of the Code of Copyright and Related Rights</i> ”. |

“REGULATION (EU) 2017/1563 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled”, by its nature is also directly applicable in Portugal.

**2. Does your national legislation permit the cross-border exchange (i.e. exportation) of “accessible format copies”, as defined in Article 2 b) MVT? If yes, under which conditions?**

Yes, Article 82°-C of the Code of Copyright and Related Rights establishes in its number 3 that “*Authorized entities established in the national territory may carry out the acts provided for in subparagraph b) of paragraph 2\* of the preceding article in favor of a beneficiary person or other authorized entity established in any other Member State[of the European Union]*” in accordance with Article 4 of the “*Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise printdisabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*”.

\* to make a copy in accessible format of a work or other material to which it has legal access or to communicate, make available, distribute or make available for free use, in non-profit manner, a copy in accessible format to the beneficiary or other entity authorized for the purpose of its exclusive use.

In addition “*REGULATION (EU) 2017/1563 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 September 2017*” establishes in its Article 3 (“*Export of accessible format copies to third countries*”) that “*An authorised entity established in a Member State may distribute, communicate or make available to beneficiary persons or to an authorised entity established in a third country that is a party to the Marrakesh Treaty an accessible format copy of a work or other subject matter made in accordance with the national legislation adopted pursuant to Directive (EU) 2017/1564.*”

**3. Does your national legislation allow the importation of “accessible format copies”, as defined in Article 2 b)<sub>2</sub> MVT? If yes, under which conditions?**

Yes, Article 82°-C of the Code of Copyright and Related Rights establishes in its number 4 that “*A beneficiary person or authorized entity in its territory may obtain or have access to a copy in accessible format from an authorized entity established in any Member State [of the European Union]*”, in accordance with Article 4 of the “*Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*”.

In addition “*REGULATION (EU) 2017/1563 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 September 2017*” establishes in its Article 4 (“*Import of accessible format copies from third countries*”) that “*A beneficiary person or an authorised entity established in a Member State may import or otherwise obtain or access and thereafter use, in accordance with the national legislation adopted pursuant to Directive (EU) 2017/1564, an accessible format copy of a work or other subject matter that has been distributed, communicated or made available to beneficiary persons or to authorised entities, by an authorised entity in a third country that is a party to the Marrakesh Treaty.*”

**4. Does your national legislation provide a definition of “authorized entity”, as defined in Article 2 c)<sub>3</sub> MVT? If yes, please provide the reference.**

Yes, Article 82°-A, d) of the Code of Copyright and Related Rights provides a definition of "authorized entity", as follows:

*“‘Authorised entity’ means an entity authorized or recognized by a Member State [of the European Union] to provide, in non-profit-making manner, services to the beneficiary persons in the field of education, teaching training, adapted reading or access to information. This includes public institutions or non-profit organizations that provide the same services to*

*beneficiary persons as part of one of their main activities, institutional obligations or as part of their public interest missions.”*

**5. Please provide a list with contact details of entities that can operate as authorized entities in your territory, and any further information that you can provide, such as number of accessible titles in the catalogue of the authorized entity and the languages covered.**

Article 82º-C, paragraph 6 of the Code of Copyright and Related Rights provides a duty for "authorized entities" to communicate to the *Instituto Nacional para a Reabilitação, I. P.* (National Institute for Rehabilitation, IP), their contact details and activities.

However, as of the 9<sup>th</sup> of December 2021, no entity has made this communication and as such Portugal does not have yet a list with contact details of entities that can operate as authorized entities nor any further information.