

## **Recommendation**

### **on charges for the provision of invoices**

Autoridade Nacional de Comunicações (ANACOM) became aware, through news reports in the media<sup>1</sup> and complaints addressed by users of electronic communications services, that MEO – Serviços de Comunicações e Multimédia, S.A., intends to charge the provision of invoices in paper to some of its customers<sup>2</sup>, as from the month of April.

ANACOM found out also that at least NOS Comunicações, S.A. and NOWO Communications, S.A. have set out in contracts they use and disclosures of their service offering conditions, that the provision of paper invoices, by mail, implies an additional burden on subscribers<sup>3</sup>.

In any of the referred situations, the provision of a paper invoice depends on the payment of an amount by customers of electronic communications companies.

Under paragraph 2 of article 1 of the Law of Essential Public Services - Law No. 23/96, of 26 July<sup>4</sup> (LEPS) - the electronic communications service integrates the list of essential public services, providers of these services being bound to observe a set of requirements provided for in that law. As such, article 9 of LEPS determines that the user of essential public services is entitled to an invoice specifying figures presented, which must be sent on a monthly basis, reporting services provided and the corresponding tariffs. Specifically as regards the electronic communications service, that Law lays down that, at the request of the user, the invoice must describe services provided with the highest degree of detail possible.

Under the Electronic Communications Law - Law No. 5/2004, of 10 February<sup>5</sup> - subscribers of electronic communications services are acknowledged the right to be provided with itemised invoices, when requested, and paragraph 5 of article 39 of this Law entitles ANACOM to define the minimum level of detail and information which undertakings must ensure for free to subscribers who request itemised invoices. It follows from this legal provision that, where an itemised invoice is requested, the service provider may demand the payment for charges that result from this request only in some situations. Where only a non-detailed invoice, or an invoice

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<sup>1</sup> Vd. <https://www.publico.pt/2018/03/17/economia/noticia/meo-passa-a-cobrar-um-euro-pela-factura-em-papel-1806919>

[https://www.sapo.pt/noticias/economia/meo-passa-a-cobrar-um-euro-pelas-faturas-em\\_5aacf2206d2e9bce57cc0e46](https://www.sapo.pt/noticias/economia/meo-passa-a-cobrar-um-euro-pelas-faturas-em_5aacf2206d2e9bce57cc0e46)

<https://eco.pt/2018/03/17/meo-passa-a-cobrar-um-euro-pelas-faturas-em-papel/>

<https://portaldaqueixa.com/comunicacoes-moveis-e-fixas/meo-taxa-de-1-para-faturas-em-papel>

<sup>2</sup> According to the conditions disclosed and published in the company's website, administrative expenses are charged for the provision of a paper invoice, in the scope of contracts for the provision of post-paid mobile voice services and MEO bundles of fixed internet and mobile internet <https://www.meo.pt/pacotes/mais-pacotes/fibra/net-voz>

<sup>3</sup> Vd. <https://www.nos.pt/particulares/outros/Pages/precarios-nos.aspx#tab6> - pricing disclosed by NOS Comunicações, S.A., which provides that the provision of an invoice by mail may cost up to 1 euro and, also, paragraph 9 of specific conditions of the contract for provision of electronic communications services practised by NOWO Communications, S.A., which provides that the failure to subscribe the electronic invoice will result in the issue of a paper invoice, against the payment of an administrative charge.

<sup>4</sup> Available at: [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1436&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1436&tabela=leis)

<sup>5</sup> Available, as it stands, at [http://www.pgdlisboa.pt/leis/lei\\_mostra\\_articulado.php?nid=1439&tabela=leis](http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1439&tabela=leis)

with the minimal level of detail defined by ANACOM, is issued, the invoice must be provided free of charge.

The Law on the processing of personal data and the protection of privacy in the electronic communications sector - Law No. 41/2004, of 18 August<sup>6</sup> - provides, in paragraph 1 of its article 8, that subscribers are entitled to receive non-itemised invoices.

It follows from the whole legal framework described above that subscribers are clearly entitled to receive invoices for services provided.

Analysing the issue under the perspective of tax obligations, it follows from point b) of article 29 of the Value Added Tax Code that natural or legal persons that pursue the activity of service provision, in an independent and regular fashion, are required to issue an invoice for each transfer of property or provision of services, regardless of the quality of purchasers or service recipients, even where the latter do not request such invoice, as well as for any payments made prior to the date of the transfer of property or provision of services. Article 36 of the same Code also lays down that invoices must be processed in duplicate, the original being provided to the customer and the copy being archived in the supplier's files. Subject to the agreement of the recipient, invoices may be sent by electronic means insofar as the authenticity of the source, integrity of contents and readability are ensured through any management checks that establish a reliable audit track, these requirements being deemed to be met where an advanced electronic signature or a system for electronic data exchange is adopted (under paragraphs 4 and 10 of the referred article 36).

From the above it follows that:

- a) The issue and provision of the invoice original to users and subscribers are duties the electronic communication service provider must observe, thus it is not legitimate for operators to pass on their customers the charge they are required to bear to meet that obligation;
- b) Users and subscribers are entitled to receive invoices for services provided, and non-itemized invoices or invoices with a minimal level of detail established by ANACOM are required to be provided free of charge, as becomes clear from LEPS, the law on the processing of personal data and the protection of privacy in the electronic communications sector and the Electronic Communications Law.

Moreover, the charge of any amount for the provision of non-itemized invoices is deemed to be particularly serious and to carry a special risk for the most vulnerable sections of the population, such as the elderly, consumers with a lower income and citizens with low levels of schooling and digital literacy.

The charging of amounts for the provision of non-itemized invoices to subscribers was also called into question by the Consumer General Directorate (DGC), the Portuguese Association for Consumer Protection (DECO) and the General Consumer Union (UGC), who submitted to ANACOM their positions on this situation.

ANACOM is closely monitoring the developments on this subject and will not stop exercising all its legal powers.

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<sup>6</sup> Available, as it stands, at <https://www.anacom.pt/render.jsp?contentId=1138221>

In the light of the above, in pursuing the tasks assigned by point h) of paragraph 1 of article 8 of ANACOM's Statutes, approved by Decree-Law No. 39/2015, of 16 March, and regulation objectives provided for in point c) of paragraph 1 and point b) of paragraph 4, both of article 5 of the Electronic Communications Law, in the exercise of powers provided for in point b) of paragraph 2 of article 9 of ANACOM's Statutes, and competences established in point q) of paragraph 1 of article 26 of the same Statutes,

**ANACOM recommends that providers of electronic communications services refrain from charging the provision of non-itemized invoices or invoices with a minimal level of detail, regardless of the medium used for the purpose.**

Lisbon, 27 March 2018