

Autoridade Nacional de Comunicações (ANACOM)

Definition of the minimum level of detail and information on bills to be guaranteed free of charge to subscribers

Final Decision

The Electronic Communications Law - Law No. 5/2004, of 10 February, as it stands¹ - enshrines the right of subscribers to obtain itemised bills, where requested (cf. point c) of paragraph 3 of article 39 of that Law), and provides also that Autoridade Nacional de Comunicações (ANACOM) may define the minimum level of detail and information which companies are required to guarantee free of charge to subscribers who request itemised bills, (cf. paragraph 5 of the same article 39).

In the framework of the provision of electronic communications services, the bill is the tool which companies use to settle amounts due to them as compensation for services provided, as well as to address subscribers for payment purposes.

As such, issuing and sending bills to customers are steps companies are required to take so that they may be paid for services provided², and, in this respect, they are instrumental in the performance of their activity.

In the perspective of subscribers of essential public services, which cover electronic communications services, the right to receive a bill that itemises services provided with the highest degree of detail possible is enshrined in article 9 of the Law of Essential Public Services - Law No. 23/96, of 26 July, as it stands (LEPS).

According to that scheme, users of essential public services, either consumers or business customers, *are entitled to a bill that duly itemises figures presented*, which must be *sent on a monthly basis and break down services provided and corresponding prices* (cfr. article 9, paragraph 1 and 2 of LEPS). Through these provisions, the law acknowledges that service users

¹ Available at: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1439&tabela=leis

² As well as to comply with tax obligations provided for in the Value Added Tax Code (VATC).

(subscribers) are entitled to a document with information that allows them to be properly - *duly* - aware of offers they are asked to pay for.

Specifically as regards electronic communications services, the LEPS stresses that, at the request of the interested party, the bill must itemise services provided with the highest degree of detail possible, without prejudice to legal provisions in the scope of the safeguard of rights to privacy and secrecy of communications³.

As such, there are requirements of clarity and transparency of information involved, that are necessary to a proper performance of contracts, with respect for the principle of good faith required by law both when the contract is concluded and while it is being performed.

These are also the requirements - which allow subscribers to be aware of and to check, in an appropriate manner, the offers they are asked to pay for - that are inherent to the task assigned to ANACOM by the Electronic Communications Law, to define the minimum level of detail and information that companies must guarantee free of charge to subscribers who request itemised billing.

It is noted that the exercise of this assignment by ANACOM does not call into question the need to ensure compliance with obligations on itemised billing issue provided for in the scope of the electronic communications universal service⁴.

The billing right, as set out in the law, thus implies that all companies that provide electronic communications networks and services ensure that bills issued and sent to subscribers include, in any event, complete and comprehensible items that allow billed amounts to be understood.

³ In this regard, it is stressed that the Law on the processing of personal data and the protection of privacy in the electronic communications sector - Law No. 41/2004, of 18 of August, as it stands -, available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1788&tabela=leis, provides, in paragraph 1 of article 8 thereof, that subscribers are entitled to receive non-itemised bills.

⁴ In the scope of the provision of the universal service, and according to paragraph 2, combined with point a) of paragraph 1, both of article 94 of the Electronic Communications Law, companies are required to *make available* free of charge bills with the following minimum level of detail:

- a) Initial price of the connection to the public communication network at a fixed location and of the provision of the telephone service over that network, where appropriate;
- b) Subscription price, where applicable;
- c) Price of use, being identified the different traffic categories, each call and the respective charge being indicated;
- d) Regular equipment rental prices, where applicable;
- e) Price for the installation of additional material and equipment requested after the service provision has started;
- f) Amounts owed by the subscriber;
- g) Compensation resulting from reimbursement.

The information requirement must also be reconciled with the need to ensure the right to receive non-itemised bills, which subscribers of electronic communications services are acknowledged, and which is enshrined in the Law on the processing of personal data and the protection of privacy in the electronic communications sector (cfr. article 8, paragraph 1, of Law No. 41/2004, of 18 of August).

It follows from the above that subscribers of electronic communications services are entitled to receive non-itemised bills - without prejudice to compliance with provisions set out in the Value Added Tax Code (VATC) - as well as itemised bills, at request, the degree of information and detail of which may vary.

Tax law - article 36 of VATC - provides that bills, the issue of which is mandatory (*vd.* article 29 of the same Code), must be processed in duplicate, the original being sent to the customer and the copy filed by the provider. Bills may be submitted electronically, subject to the addressee's agreement, insofar as the authenticity of their origin, the integrity of contents and their readability are ensured through any means of control that create a reliable audit trail, these requirements being deemed to be met where an advanced electronic signature or an electronic data exchange system is adopted (under paragraphs 4 and 10 of the referred article 36).

It is also clarified that elements and information that, in this context, are intended to be included in bills, at request and free of charge for the subscriber, must cover, bearing in mind paragraph 5 of article 39 of ECL, bills intended for consumer and non-consumer subscribers. Nevertheless, it is admitted that the detail now defined, especially items of an informative nature, applies, duly adapted, to bills for non-consumer subscribers that have previously negotiated with the company the conditions for the provision of his/her service or set of services, including prices and any promotional terms, which the user of the service(s) may have adapted to his/her needs.

As such, taking into account the purpose intended to be achieved with the provision in paragraph 5 of article 39 of the Electronic Communications Law, as well as the assignment conferred under paragraph 1, point g), and paragraph 2 of article 47-A of the same statutory instrument, ANACOM takes the view that, without prejudice to the compliance with obligations provided for in VATC in the scope of billing obligations, companies providing public communication networks or publicly available electronic communications services, following a request for itemised billing from the respective subscribers, are required to make available, free of charge, a bill with the following minimum level of detail and information, where items concerned are applicable:

- a) Customer number or equivalent identifier;

- b) Commercial designation of the billed service(s);
- c) Billing period;
- d) Total amount of the bill;
- e) Service(s) installation and activation price;
- f) Purchase or rental price of equipment requested at the time of the contract conclusion or subsequently, after the service provision has started, the corresponding billed unit(s) being indicated;
- g) Price corresponding to the monthly charge or reference period on which the billing is based, service(s) covered being indicated;
- h) Value of other service(s) or additional charges not included in the monthly charge or reference period on which the billing is based, the corresponding category(ies) and amount(s) being indicated;
- i) Value of additional communications (calls and messages, including to non-geographic numbers, Internet traffic, among others) not included in the monthly charge or reference period on which the billing is based, the corresponding category(ies) and amount(s) being indicated;
- j) Value of discounts applied;
- k) Billing adjustments, as well as the subscriber's debits and credits, duly broken down and justified, and itemised separately, where appropriate;
- l) The value of subscriber top-ups and consumptions, balances carried over from prior billing periods and existing balances at the end of the billing period, that may be carried over to the subsequent period;
- m) Customer service contact numbers;
- n) Expiry date of the binding period;
- o) Charges due on the date the bill is issued for contract termination on the subscriber's initiative before the expiry date of the binding period;
- p) Final date for payment;
- q) Admissible means of payment;
- r) Reference to the possibility of opposition, by the subscriber, to billed amounts, the deadline for the purpose, as well as means to do so before the company providing the service(s), being clarified that the service suspension does not take place where the bill amounts are the subject of a written claim submitted to the company, on the basis of the non-existence or unenforceability of the debt;

- s) Reference to the possibility of exercising the right to complain through the complaints book, companies being entitled to comply with this obligation by indicating on the bill the website where the electronic complaints book is available⁵.

In general, listed elements may be grouped into four large information cores:

- The core of elements that identifies the subscriber who is the bill recipient and the period the bill concerns (points a), b) and c) above);
- The core of elements that allows the subscriber to check and control, on the basis of up-to-date information, the costs incurred with services and communications engaged (points d), e), f), g), j), and k) above), in the knowledge also, in this scope, of how long these costs will be borne in case there is a binding period associated to the contract (point n) above) and charges dues on the date the bill is issued for contract termination on the subscriber's initiative before the expiry date of the binding period (point o) above);
- The core of elements that allows the subscriber to monitor its consumptions and corresponding expenses, thus to control the expenses incurred in, avoiding bill shock⁶ (points h), i) and l) above), which is especially relevant in the current context where most contracts concluded with consumers concern service bundles, to which an increasing number of additional services, apps or communications may be added;
- The core of elements that allows the subscriber to know how and by which deadline he/she are required pay the bill, and in case of doubts or disagreement as to the amount due, how the service provider may be contacted and how the right to complaint may be exercised (points m), p), q), r) and s) above).

The referred level of detail and information must be included free of charge in bills, but this is without prejudice to the possibility that, in order to meet an express request from the subscriber, or on their own initiative, companies may issue and submit to their subscribers bills with an increased level of information and detail which, in this case, will observe conditions agreed between the parties for this purpose.

As such, as bearing in mind the above, ANACOM takes the view that it follows from the combination of all legal provisions mentioned above, especially paragraph 5 of article 39 of the Electronic Communications Law, that companies may not charge their subscribers any amounts

⁵ Available at <https://www.livroreclamacoes.pt/inicio>

⁶ The negative reaction subscribers experience where their bill requires the payment of unexpected amounts.

for the issue and submission of non-itemised bills or bills with the level of detail and information broken down above and now set out, regardless of the medium or means used for that purpose.

Companies providing public communication networks or publicly available electronic communications services are required to maintain, during the performance of the contract, the above-mentioned level of detail and information, in case it has been requested, and may only change it following a specific request from subscribers for the purpose.

Consultation procedures

By determination of 01.06.2018, ANACOM submitted the draft decision on the definition of the minimum level of detail and information on bills to be guaranteed free of charge to subscribers to a prior hearing provided for stakeholders, in compliance with the Administrative Procedure Code, as well as to the general consultation procedure set out in article 8 of Law No. 5/2004, of 10 February, as it stands (Electronic Communications Law - ECL)⁷, a time limit of twenty working days having been given in both cases for comments to be provided.

At the request of a stakeholder, ANACOM extended the time limit for comments in the scope of the ongoing prior hearing and public consultation for an additional 5 working days. The deadline for submitting comments in the scope of these procedures thus expired on 10 July 2018.

All contributions were received within the deadline set for the public consultation and prior hearing of stakeholders.

ANACOM prepared the report of the referred procedures, which includes a summary of comments received, as well as the Regulatory Authority's views on issues raised by respondents. This report substantiates and is deemed to be an integral part of this decision.

Determination

In the light of the above, in pursuit of legal assignments conferred under point h) of paragraph 1 of article 8 of the Statutes, approved by Decree-Law No. 39/2015, of 16 March, as well as of regulatory objectives provided for in point c) of paragraph 1 and point b) of paragraph 4, both of article 5 of the Electronic Communications Law, and in the exercise of powers conferred under paragraph 5 of article 39, as well as paragraph 1, point g) and paragraph 2 of article 47-A of the

⁷ Available at http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1439&tabela=leis.

Electronic Communications Law, the Management Board of ANACOM, under point b) of paragraph 1 of article 26 of the same Statutes, hereby determines:

- (i) To order companies providing public communication networks or publicly available electronic communications services, without prejudice to compliance with obligations provided for in VATC in the scope of billing obligations, as well as with legal obligations as regards the protection of personal data and privacy, that they make available, free of charge, the following minimum level of detail and information in bills they issue and submit to subscribers that request it, where items concerned are applicable:
 - a) Customer number or equivalent identifier;
 - b) Commercial designation of the billed service(s);
 - c) Billing period;
 - d) Total amount of the bill;
 - e) Service(s) installation and activation price;
 - f) Purchase or rental price of equipment requested at the time of the contract conclusion or subsequently, after the service provision has started, the corresponding billed unit(s) being indicated;
 - g) Price corresponding to the monthly charge or reference period on which the billing is based, service(s) covered being indicated;
 - h) Value of other service(s) or additional charges not included in the monthly charge or reference period on which the billing is based, the corresponding category(ies) and amount(s) being indicated;
 - i) Value of additional communications (calls and messages, including to non-geographic numbers, Internet traffic, among others) not included in the monthly charge or reference period on which the billing is based, the corresponding category(ies) and amount(s) being indicated;
 - j) Value of discounts applied;
 - k) Billing adjustments, as well as the subscriber's debits and credits, duly broken down and justified, and itemised separately, where appropriate;
 - l) The value of subscriber top-ups and consumptions, balances carried over from prior billing periods and existing balances at the end of the billing period, that may be carried over to the subsequent period;
 - m) Customer service contact numbers;
 - n) Expiry date of the binding period;

- o) Charges due on the date the bill is issued for contract termination on the subscriber's initiative before the expiry date of the binding period;
 - p) Final date for payment;
 - q) Admissible means of payment;
 - r) Reference to the possibility of opposition, by the subscriber, to billed amounts, the deadline for the purpose, as well as means to do so before the company providing the service(s), being clarified that the service suspension does not take place where the bill amounts are the subject of a written claim submitted to the company, on the basis of the non-existence or unenforceability of the debt;
 - s) Reference to the possibility of exercising the right to complain through the complaints book, companies being entitled to comply with this obligation by indicating on the bill the website where the electronic complaints book is available⁸;
- (ii) To order, according to the law, that companies providing public communication networks or publicly available electronic communications services ensure that bills referred in (i), as well as non-itemised bills or bills with a level of detail below the level provided for above, are issued and submitted free of charge to subscribers, regardless of the medium or means used for that purpose;
 - (iii) To order that companies providing public communication networks or publicly available electronic communications services are required to maintain, during the performance of the contract, the level of detail and information referred in (i), in case it has been requested, and may only change it following a specific request from subscribers for the purpose;
 - (iv) To order that companies covered by this decision implement it within at the most six months from the approval of the final decision, so as to ensure compliance therewith of bills issued as from that date, in the scope of ongoing and new contracts.

Lisbon, 5 September 2018.

⁸ Available at <https://www.livroreclamacoes.pt/inicio>