

DETERMINATION

on the object and form of public disclosure of conditions of provision and use of electronic communication services

Amendment to determination of 21 April 2006

By determination of 21 April 2006, the Management Board of ANACOM approved a decision on the object and form of public disclosure of the conditions of provision and use of electronic communication services (ECS).

Having been put in place measures to enforce this determination, by checking websites of service providers and points of sale (stores and shopping areas), it was found that it was difficult to monitor compliance with the determination, due to the size of sites, the spread of information, the continuous change in information and the fact that some information deemed to be of a compulsory disclosure did not apply to the provision of some services.

More than five years after the approval of the determination, and on the basis of the experience gained in the meantime, there are grounds to adjust the obligations laid down with regard to the disclosure of conditions of provision and use of electronic communication services to the current features of those provisions, so as to ensure that effective and transparent information is provided thereon, thus ensuring that the rights and interests of end-users, specially of consumers, are protected.

For this purpose, in January this year a draft amendment was submitted to the general consultation procedure provided for in article 8 of Law number 5/2004, of 10 February (ECL). The analysis of positions expressed by the different bodies in the scope of that consultation procedure, as well as ANACOM's views thereon, are covered in the report in annex to this determination, which is deemed to be an integral part hereof and constitutes the grounds hereto.

Further to the publication of Law number 51/2011, of 13 September, which amended Law number 5/2004, of 10 February, transposing to the national legal order the amendments resulting from Directives 2009/136/EC and 2009/140/EC, both of the European Parliament and of the Council, of 25 November, this final decision now includes some obligations expressly set forth in the ECL, and promotes terminology adjustments to reconcile words or phrases used in this determination with those currently established in the ECL.

In its current wording, the ECL does not provide for specific requirements as regards information on the provision and use of publicly available telephones services. In line with Directive 2002/22/EC, as amended by Directive 2009/136/EC, the ECL now provides for the same requirements for all providers of public communications networks or publicly available electronic communications services with regard to the provision of information on access to and use of services provided.

The determination version submitted to public consultation, in spite of making the distinction, in terms of organization, between different information requirements, according to whether the provision of publicly available telephone networks and services or the provision of other electronic communications services were concerned, already established a very similar level of information for all services covered, and several information requirements even coincided.

In the light of the new wording of article 47 of the ECL, the manner how information obligations are presented must now be reordered, and a common set of requirements has been provided for, corresponding to obligations provided for in the draft decision submitted to consultation where obligations are identical, and separating information requirements on account of specific service characteristics which justify a special wording. However, the

contents of obligations provided for herein do not differ, with respect to their essential aspects, from those set out in the draft decision submitted to consultation.

Therefore, under point g) of article 9 of the Statutes of ICP - ANACOM, in annex to Decree-Law number 309/2001, of 7 December, and in the scope of powers provided for in point h) of paragraph 1 of article 6 of the mentioned Statutes and of regulatory objectives provided for in points a) and c) of paragraph 1, point a) of paragraph 2 and points b) and d) of paragraph 4, all of article 5 of the ECL, the Management Board of ANACOM, in the exercise of its powers provided for in paragraph 2 of article 47 of the ECL, hereby determines:

- 1)** To amend the determination on the object and form of public disclosure of conditions of provision and use of electronic communications services, approved on 21 April 2006, which shall have the wording mentioned in the annex hereto;
- 2)** To order undertakings providing public communications networks and publicly available electronic communications services to implement the amendments now approved within at the most 120 working days following notification hereof.

ANNEX

OBJECT AND FORM OF PUBLIC DISCLOSURE OF CONDITIONS OF PROVISION AND USE OF ELECTRONIC COMMUNICATION SERVICES

1. Obligations provided for herein apply to the disclosure of information related to the standard offer of publicly available electronic communications services to end-users, including, duly adapted, the offers aimed for citizens with special needs.

For the purposes hereof, standard offers shall mean those offers which include common terms and conditions of service provision, corresponding to a pattern determined *a priori* in a contract or standard contract, as well as those in which the service user may only enter into a contract in predefined terms.

2. Provisions herein are without prejudice to any other obligation to provide and disclose information laid down in the law, regulation or ANACOM's determination.

3. Undertakings providing public communications networks or publicly available electronic communications services must make available to the public, according to requirements laid down in paragraph 2 of article 47 of ECL:

- a) Identification of the provider;
- b) Information on publicly available electronic communications services being provided;
- c) Standard tariffs;
- d) Compensation or refund systems;
- e) Types of maintenance service offered;
- f) Standard contract conditions;
- g) Dispute settlement mechanisms.

4. The content of information referred to in paragraph 3 hereof shall be the following:

Identification of the provider

Information concerning the identification of the provider shall comply with article 171 of the Code of Commercial Companies, pursuant to which all commercial companies must clearly state, in addition to the company name, the legal form of the company, the legal address and trade register office where they are registered, the number of the company in that register, and where appropriate, the fact that the company is being wound up.

Contact details shall also be published and disclosed, namely telephone numbers and email of the commercial customer service (including costs related to calls made from the various fixed and mobile networks) and website address, if any.

Information on publicly available electronic communications services being provided

- Description of services offered

- Telephone services, including providers of nomadic VoIP service:

Description of services offered, covering, where appropriate, the following aspects, among others: ability to make and receive national and international calls and to access emergency services; other related services, namely, facilities concerning the identification of caller and called lines, pursuant to article 9 of Law number 41/2004, of 18 August, operator services, directories, directory enquiry services, selective call barring, roaming, among others; where the roaming service is not automatically available, providers must provide information on how this feature may be activated, as well as where additional information thereon may be obtained, namely including applicable tariffs;

- Other electronic communications services:

Description of services offered, as well as of additional services, related facilities and features, including mobile internet access on national territory or while roaming. Where the roaming service is not automatically activated, providers must provide information on how this feature may be activated, as well as where additional information thereon may be obtained, namely including applicable tariffs.

- Any restrictions on access to services

- Nomadic and home-zone services:

Users shall be provided information on how these services may be used, as well as on any associated restrictions, namely with regard to making calls to emergency services and to caller location;

- Specifically for telephone services:

Information shall be provided on restrictions resulting, namely, from the need to verify beforehand the technical conditions required to provide the service, inability to access the internet when subscribing a given telephone service offer, inability to make carrier pre-selection calls for certain types of numbers;

- Other electronic communications services:

Information shall be provided on any restrictions in the access to services resulting, namely, from the need to verify beforehand the technical conditions required to provide the service.

Any restrictions in the access to global applications (e.g. VoIP), IP protocols and ports (e.g. SIP, POP 3, FTP).

- Service coverage

- Nomadic and home-zone services:

Information shall be provided on restrictions related to location and area of use of the service.

- Other electronic communications services:

Information on coverage of services, even if only by reference to where the user may obtain up-to-date information on service coverage and provision, making it clear, in this scope, that connectivity tests may be required to verify whether the service is available at the customer's area, where appropriate.

- Levels of quality provided

- a) Information shall be provided on the levels of quality of service which the customer may expect to be provided by the service provider, on average, and on the minimum levels of quality of service, set out by law or regulation, which must be provided to each customer (for example, for telephone services, the deadline for implementing portability provided for in the respective Regulation), non-compliance with which determines the payment of compensation or refund. The annex hereto suggests some parameters which companies may use.
- b) The provider must also indicate how information on minimum levels of quality of the service to be provided may be obtained.
- Specifically for Internet access services:

In order to ensure that users are provided with the clearest information on access speeds, undertakings must guarantee:

- a) That interested parties are provided with clear and accurate information for the various service offers, distinguishing between upload and download speeds, the maximum access speed provided and the average access speed estimated by the provider (the speed which on average is estimated by the provider to be made available under normal usage conditions, which may frequently differ from the maximum access speed disclosed).
- b) The disclosure of levels of quality related to maximum and average access and browsing speeds must be supplemented, where appropriate, by a warning that the provided speed may not be ensured for each and every connection, as this depends on the level of use of the network and server which the customer connects to.
- c) The provision to interested parties of clear and accurate information on migration between offers, specifically to meet a customer request to change its maximum speed.

It is recommended that providers make available and duly highlight at their websites a feature that allows interested parties to measure their access upstream/downstream speed for a given period, whether instant or average.

Standard tariffs

This information aims to enable consumers to determine how the service is charged and billed.

For this purpose, the following tariff information must be published and disclosed:

- i) Type and levels of tariffs applicable to the service provision concerned
 - Specifically for telephone services: including tariff types and levels that apply to roaming communications, geographic steps, intranet and internet tariffs and tariffs for different types of numbers, namely non-geographic numbers;
 - Specifically for Internet access services: including tariff types and levels that apply to the mobile Internet access service on national territory and while roaming;
- ii) Tariff charged for installing, reinstalling and uninstalling services concerned (breaking down tariffs for restoring former conditions), where appropriate;
- iii) Minimum consumption, where appropriate;
- iv) Maintenance fees, where appropriate;

- v) Equipment renting prices, where appropriate;
 - vi) Discount and credit conditions;
 - vii) Peak versus off-peak hours, where appropriate;
 - viii) Prices per period;
 - ix) Information on whether tariffs are pre-paid or post-paid and whether there are any associated traffic limits;
 - x) Disclosure of technical consumption-control means available to users (including for offers concerning the use of Internet access service while roaming), regardless of the criteria used to bill the service, if any, as well as of information on how to enable and disable this feature; and
 - xi) Information on “Fair Use Policy”/ “Acceptable Use Policy”, where appropriate, in particular on their content and means to access this information.
- Specifically for telephone services:
 - a) Indication of the type of calls included in commercial unlimited traffic offers (namely, calls to geographic or non-geographic numbers), where appropriate;
 - b) Any costs associated to operator portability, where appropriate;
 - c) Tariffs of communications to enquiry services on tariffs of calls to ported numbers (where the obligation to implement this service applies);
 - Specifically for Internet access services:
 - a) Contracted amount of data sent and received, in case this is the criterion used to bill the service;
 - b) Where the service is billed on the basis of the distinction between national and international traffic, information of the technical means available to the user, if any, to acknowledge beforehand and online the type of traffic (national or international) associated to the addresses intended at any given time to be accessed; and
 - c) Disclosure of the respective traffic management policies, if any, restricting the use of the Internet access service, when subscribing an unlimited traffic tariff (including happy hours).
 - For all electronic communications services:
 - a) The website of the service provider must include a link to ICP-ANACOM’s Tariff Observatory, as far as services covered by this observatory are concerned;
 - b) It is recommended, for all services, that service providers make available simulators, at the respective websites and points of sale, allowing the different tariff plans they provide to be compared.
 - For all publicly available fixed services:

Information must be made available with regard to the fact that the offer of publicly available electronic communications networks and services at a fixed location may give rise to the payment of a MFRW. Interested parties are requested to check, at their municipality of residence, if this fee applies and how much it amounts to.

Compensation or refund systems

This item concerns compensation or refund due to the subscriber in case of non-compliance with the offered minimum levels of quality, including those which are set out in the contract, or established by law or regulation, namely compensation due to subscribers as provided for in the Portability Regulation, where appropriate.

Types of maintenance service offered

Information on maintenance services made available by the provider and obligations undertaken by the latter, as well as contact details, namely telephone numbers and email of customer services for reporting faults (including costs related to calls to indicated numbers made from the various fixed and mobile networks) and business hours, must be published and disclosed.

It is recommended that information on the minimum level of quality provided to customers in terms of fault repair time be published and disclosed. Providers may measure parameter c) in the annex hereto for this purpose.

Standard contract conditions

The general and standard contract conditions which must be subscribed / accepted by the customer to contract the service provision must be made public and disclosed.

Information to be made public and disclosed, in the scope of standard contract conditions, must be supplemented, where appropriate, by a warning that the service provision depends on the acceptance of minimum contractual periods, which shall be given the same highlight as the service tariff, in terms of prominence and font size.

With regard to minimum contractual periods, clear information must also be made available on:

- The duration of the minimum contractual period and conditions that apply in case of termination of the contract before that period is over; and
- Where the minimum contractual period is due to the sale of equipment under special conditions, the provider shall provide information on the characteristics of the equipment, namely whether it is locked, the respective price and unlocking conditions, as well as the price for a locked and unlocked equipment.

The conditions for termination of the contract must be made publicly available.

- Specifically for telephone services:

Any formalities and documents to be submitted with the portability application to terminate the contract must be indicated, as well as any charges resulting from such termination.

Dispute settlement mechanisms, including those developed by the undertaking providing the network or service

Information on judicial and out-of-court dispute settlement mechanisms must be publicized and disclosed, including internal procedures developed by the company, in order to make clear to the public, and specifically to customers, that they exist and how they may be accessed.

It is recommended that the following information be also published:

- i) Available channels for submitting complaints, including the identification of the body responsible within the company's structure for handling complaints;
 - ii) Deadline by which the user is to submit complaints;
 - iii) Deadline by which the company must acknowledge receipt of the complaint;
 - iv) Deadline by which the company must reply to complaints; in this scope, it is suggested that providers measure parameter e) in the Annex hereto;
 - v) Deadline by which, in the absence of a decision on the complaint, the provider undertakes to contact the customer to inform him/her on the progress achieved towards the situation complained; and
 - vi) Subscriber option to submit disputes arising from the interpretation or application of the contract to out-of-court dispute settlement mechanisms, as well as the respective contact particulars.
5. Undertakings providing public communications networks or publicly available electronic communications services must ensure the publication and disclosure of information provided for in the preceding paragraph under the following terms:
- i) Undertakings providing public communications networks or publicly available electronic communications services must ensure that conditions of provision and use of communications services provided for in this determination are published and disclosed to interested parties, in writing and free of charge, at all providers' stores and points of sales of their services and Internet websites, if any.

Providers' stores shall mean fixed or permanent premises where service providers pursue their activity and where a direct contact with the public is established, namely through direct customer services intended for the offer of products and services or for development of customer relations.
 - ii) With regard to the manner how information is disclosed to interested parties, service providers must ensure that, at their stores and at any points of sale, information is made available for consultation concerning the provision and use of services provided for in this determination through one of the following means:
 - Online consultation of Service Provision Conditions, by accessing the provider's website; or in the alternative,
 - Consultation of the same information made available in written form, with clear and comprehensive information on Service Provision Conditions, including elements which must be disclosed pursuant to this determination.
 - iii) Service providers must also make sure that at all their stores the information referred to above is made available to interested parties in a physical medium, at their request, and it is accepted that such information may be printed at the location by accessing the provider's website or websites.
 - iv) Service providers must also make sure that at points of sale which are not their own stores, there is a clear indication on the contact details for obtaining information on the respective service provision conditions. In the case of door-to-door contract proposals or of the resort to remote use techniques, the provision of information provided for in points 3 and 4 hereof, or of contact details for obtaining it, must also be guaranteed.

- v) Information to be made available at providers' websites must be accessed through a hyperlink entitled: "Service Provision Conditions".
- vi) This hyperlink must appear on the home page or in the first page of each service commercial offer. The hyperlink position must be distinctly visible and identifiable, and it must be accessed without using the navigation bar of the page. In any case, full access to information by any interested party, regardless of its special needs or the equipment used, must be ensured.
- vii) The referred hyperlink must give access to a list of items on which, pursuant to this determination, the provider must make information available. Each of these items must be directly hyperlinked to the page where the corresponding information is available. In the alternative, this information may be presented in the same page where items are listed.
- viii) Items in this determination which do not apply to the offer shall bear the indication "not applicable".
- ix) Both the hyperlink text and the information content to which it gives access, or even an intermediate index, must be made available in a text format. Basic accessibility rules must also be ensured, such as font size and text/background contrast. It is not allowed to make information exclusively available in formats and supports like image, flash or video.
- x) The information content of each item must be supplemented with the corresponding date of publication and last update.
- xi) Providers of publicly available electronic communications services must notify ANACOM of the (URL) page from which the item index which must be disclosed may be reached (or accessed). Any subsequent change to the identification of that page must be communicated at least five days ahead.

By notifying ANACOM of the (URL) page which allows access to information made available to the public on conditions of provision and use of publicly available telephone networks and services, undertakings fulfil paragraph 3 of article 47 of ECL, being thus exempted from submitting to this Authority any further information for this purpose.

- xii) To ensure that information on conditions of provision and use of the service made available by service providers is within reach of all interested parties, including citizens with special needs, it is recommended that the respective websites are accessible, specifically by meeting the "Web Content Accessibility Guidelines", in their most recent version. These guidelines include several recommendations that aim to make Internet content accessible to everyone, regardless of specific needs or limitations, either physical or resulting from the equipment used. These guidelines are available at the official website of the World Wide Web Consortium, which may be accessed from the link <http://www.w3.org/http://www.w3.org/>.
- xiii) Where contracting the service entails the purchase of a kit/package in shopping areas, the outer surface of the package must be clearly marked with the following information:
 - Identification of the service provider;
 - General description of the service, indicating the main features;
 - Indication of the contact details for obtaining information on the minimum contractual period, if any, coverage, tariffs and other conditions of provision

and use of the service, including, the website of the provider, if any (in this case, the respective (URL) page of access to the "Service Provision Conditions" hyperlink must also be indicated).

ANNEX

Parameters of quality of electronic communication services suggested by ANACOM to assist operators in defining levels of quality to be provided on average to their customers:

a) Maximum service start-up time:

Time measured in consecutive calendar days/hours, from the moment the customer submits a valid service application up to the moment in which the service is actually made available, where such time is outside the customer's control.

Maximum service start-up times for changes to service modes/features, change of customer address and the set-up of additional services must also be taken into account.

b) Service interruption/suspension time:

Monthly time of service interruption/suspension, measured in hours per month from the moment the customer presents the complaint up to the moment the service is restored, where such time is outside the customer's control.

If the service has not been restored by the end of the month, the time calculation restarts on the first day of the following month.

c) Fault repair time:

Monthly time, measured in consecutive hours, from the instant the customer reports a valid fault to the services of the provider, which entails the creation and register of a claim number, to the instant where the service has been restored to full normal working order, that is, where the initial situation that existed before the fault occurred has been restored. The time for which the customer is responsible shall not be accounted for.

d) Time to disconnect/disable services:

Time measured in consecutive hours from the moment a valid application for service termination is received from the customer up to the moment the service is actually disconnected, where such time is outside the customer's control. Valid application means any request attaching the necessary documents.

e) Maximum response time for customer claims and information requests:

Time measured in calendar days from the date the provider is presented with the claim/information request, up to the date the claim decision is notified to the claimer/date the response to the information request is sent by the company. The time for which the customer is responsible shall not be accounted for.