

**ICP-ANACOM**

**REGULATION ON THE SETTLEMENT AND COLLECTION OF FEES  
DUE TO ICP-ANACOM**

## I

### REPORT

1. – The Instituto das Comunicações de Portugal (ICP) was created by Decree-Law no. 188/81 of 2 July. The corresponding statutes were approved by Regulatory Decree no. 70/83 of 20 July. These statutes foresaw that ICP would be financed by means of fees, penalties and other revenues collected within the scope of radio spectrum management; of fees to public communications operators determined annually by a joint decree of the Minister of Public Works and Transports and the Minister of Finances and the Plan; of allocations from the State Budget, and of any other revenue, income or values resulting from its activity or that, by law or by contract, would belong or be granted to it.

With the exception of budget allocations, this financing solution was fundamentally maintained by Decree-Law no. 283/89 of 23 August, which revoked Regulatory Decree no. 70/83 and established ICP's revenue framework as follows:

- Fees and other revenues collected within the scope of radio spectrum management;
- Fees and other revenues collected within the scope of the licensing and monitoring of operators and providers of communications services.
- The result of the application of penalties;
- Fees and other revenues resulting from the homologation of materials and equipment;
- Other revenues, income or values resulting from its activity or which, by law or by contract, would belong or be granted to it, as well as any donation, subsidies or others modes of financial support;
- The result of the selling of own goods and of establishing of rights over them;
- Fees paid by the public telecommunications operators, defined annually by a decree of the minister in charge and paid in advance in quarterly instalments, with the purpose of ensuring the entire coverage of the difference between the amount of the remaining revenues and ICP's global expense. They are divided among the public use telecommunications operators as a proportion of the global volume of the corresponding revenues in the year prior to the year when the budget proposal is produced;

The progressive liberalization of the telecommunications and postal services sectors, essentially marked by the transposition of Community directives, lead to the inclusion of a set of rules in the internal law that considerably broadened ICP's powers and motivated a deep modification to its statutes, implemented by Decree-Law no. 309/2001 of 7 December, which involved a revision of its organic-institutional model and its designation, which became ICP – Autoridade Nacional de Comunicações (ICP-ANACOM).

As mentioned in the preamble to Decree-Law 309/2001, «as the sector's liberalization grows, the communications regulatory authority is increasingly called upon to ensure real and effective competition in the sector and to operate as a neutral and impartial arbiter. This means that ensuring the existence of effective competition among operators and service providers, concerning both the access and the performance of the market, requires from ICP-ANACOM a greater functional and organic independence».

In this sense, ICP-ANACOM's revenue framework ceased to foresee the overall coverage of the difference between the amount of the remaining revenues and the global

expense through fees shared by public telecommunications operators as a proportion of the global amount of the corresponding revenues in the year prior to the year when the budget proposal is produced. Also – leaving aside the revenues derived from the application of contract fines and penalties, as well as revenues derived from the provision of services, donations, subsidies or other means of financial support, the sale of own goods and the establishment of rights over them, interest from financial applications and other revenues, income or values derived from its activity or which, by law or by contract, would belong or be granted to it – its financing became limited to the product of the collection of two types of fees:

- The fees and other revenues collected within the scope of granting operation licenses and the monitoring of communications operators and service providers;
- The fees and other revenues collected within the scope of radio spectrum management and of the national numbering plan.

With the entry into force of the Electronic Communications Law (Law no. 5/2004 of 10 February) this set of fees was arranged according to the following terms:

- On one hand, fees are determined according to the *administrative costs* resulting from the management, control and enforcement of the general authorization regime, of the allocation of rights of use, and of the enforcement of specific obligations in terms of access, interconnection and the universal service, among others. This is the case with fees due for the issue of statements supporting rights granted to entities that provide electronic communications and services; fees concerning the activity of electronic communications networks and services provider, on a yearly basis; fees concerning the granting of rights of use of radio frequencies; and fees concerning granting of rights of use of numbers and their reservation.
- On the other hand, fees that must reflect the need to ensure an *optimal use of resources*, i.e., of radio frequencies and numbers, which should be objectively justified, transparent, non-discriminatory and proportional to their intended use, also taking into account the regulation objectives.

Consequently, allocation criteria are different depending on whether they concern fees established according to administrative costs, or fees established according to criteria concerning the optimal the use of frequencies and numbers.

Furthermore, it is also ICP-ANACOM's responsibility to collect fees due within the scope of the law and jurisdiction applying to the Amateur and Amateur by Satellite Services; of the law and jurisdiction applying to the Personal Radio Service – Citizens' Band (CB); of the regime for access and operation of the activity of Audiotext provision; of the law and jurisdiction for the installation of telecommunication infrastructures in buildings and the corresponding connections to public telecommunications networks; the regime for certification of installations and evaluation of conformity of equipment, material and infrastructure; and finally, the fees due by entities licensed and authorized for the activity of postal services.

2. – As a result, ICP-ANACOM is responsible for collecting a very heterogeneous universe of fees, which do not have homogenous posting and settlement modes, even if the distinction between fees established according to administrative costs and fees established

according to criteria ensuring the optimal use of common resources applies homogeneously throughout that universe.

<p><b>Fees associated to administrative costs</b></p>	<ul style="list-style-type: none"> <li>- Fees due for the issue of statements supporting rights granted to entities that provide electronic communications and services;</li> <li>- Fees concerning the activity of electronic communications networks and services provider;</li> <li>- Fees concerning the granting of rights of use of frequencies;</li> <li>- Fees concerning granting of rights of use of numbers and their reservation;</li> <li>- Fees due within the scope of the regime of the amateur and amateur by satellite services, except when associated to ensuring the optimal use of common resources;</li> <li>- Fees due within the scope of the regime for access to, and operation of the activity of audiotext provider;</li> <li>- Fees due within the scope of the regime for the installation of telecommunication infrastructures in buildings and the corresponding connections to public telecommunications networks;</li> <li>- Fees due within the scope of the regime of the activity for certification of installations;</li> <li>- Fees due within the scope of the regime of the evaluation of conformity of equipment, material and infrastructure;</li> <li>- Fees due by entities licensed and authorized for the activity of postal services.</li> </ul>
<p><b>Fees associated to ensuring the optimal use of common resources</b></p>	<ul style="list-style-type: none"> <li>- Fees for the use of frequencies;</li> <li>- Fees for the use of numbers;</li> <li>- Fees due within the scope of the regime applying to the use of the Personal Radio Service - Citizen Band (CB);</li> <li>- Fee for the use of annual occasional call indicative (ICOA);</li> <li>- Fee for the use of radio spectrum due by the holder of a national amateur certificate (CAN).</li> </ul>

3. – Administrative Rule no. 1473-B/2008 of 17 December approved ICP-ANACOM’s new fee model, based on the distinction between fees established according to administrative costs and fees due for the use of common resources. This new financing model of ICP-ANACOM aimed to fulfil the provisions of article 105 of the Electronic Communications Law, as well as the remaining legislation applying within the scope of fees due to ICP-ANACOM.

It occurs, however, that concerning the procedure for the posting, settlement and collection of fees due to ICP-ANACOM, the matter is not covered by Administrative Rule no. 1473-B/2008 of 17 December, which is limited to defining the amount of the fees, as well as the periodicity of their settlement. The sole provisions concerning procedures are contained in its articles 3 and 4, which foresee, for the settlement of fees due for the operation of the activity of provider of publicly available electronic communications networks and services, the sending to this Authority of a statement indicating the amount of relevant revenues directly related to the activity’s operation in the previous calendar year.

Consequently, and taking into account the experience gathered concerning the posting and settlement of fees due for the use of radio spectrum, creating a regulation for the settlement and collection of fees due to ICP-ANACOM is justifiable, in order to ensure that its posting is homogeneous, following simple and transparent procedures, and ensuring to the taxable persons the mechanisms for perceiving the purpose and the justification of the paid amounts.

It is about introducing standardized procedures into ICP-ANACOM's new fee model, thus regulating all internal and external settlement and collections issues.

4. – The preparation of a Regulation with these characteristics is based on the legal empowerment mentioned in articles 9, paragraph a) and 26, paragraph b), of ICP-ANACOM's statutes.

In fact, by foreseeing that ICP-ANACOM, within the scope of its regulatory and supervision powers, can generate regulations when these are deemed indispensable for carrying out its responsibilities, article 9, paragraph a) of the its Statutes grants it a *generic regulatory power* whenever the fulfilment of its responsibilities are concerned, forcibly including the collection of fees needed to finance the corresponding regulatory and supervision activity, as well as those resulting from the use of common resources.

On the other hand, by equating ICP-ANACOM to the State, namely concerning the enforced collection of fees, article 2, paragraph a) of decree-Law no. 309/2001 of 7 December specifically puts this matter under ICP-ANACOM's responsibility.

Besides, it is up to the Board of Directors of ICP-ANACOM to collect revenues and authorize expenses, to approve the regulations and establish the determinations necessary for carrying out its activity (article 26, paragraphs b) and g) of ICP-ANACOM's Statutes).

Yet, the collection of fees by ICP-ANACOM implies a previous procedure of posting and settlement, in order to calculate the amount to be paid by the taxable person. This procedure must be approved by the tax receiver, in compliance with general principles regulating this administrative activity. Despite the fact is that it was a novelty in Portuguese law to delegate a generic power to produce regulations that may contain an initial or primary right, to entities that are not included in the autonomous public administration, the mentioned regulatory power is subject to recognized limits, in this case:

- respect for the Constitution;
- rule of Law;
- respect for ICP-ANACOM's powers;
- fulfilment of the provisions of article 11, no. 1 of ICP-ANACOM's Statutes (compliance with principles of legality, necessity, clearness, participation, and publicity);
- primacy of the Government's regulations edited under the powers specifically granted by law.

The posting, settlement, and collection of fees due to ICP-ANACOM – which are fundamental revenues for its operation – is founded, on one hand, on specific legislation regulating the material regime of each fee and on the corresponding implementation's administrative rule, and, on the other hand, on procedural rules that must be stated on an administrative regulation that frames the corresponding posting, settlement, and collection procedure.

As a result, the conclusion is that the approval of a regulation with those characteristics is framed within the scope of ICP-ANACOM's external regulatory power, expressly established in articles 9, paragraph a) and 26, paragraphs b) and g) of the corresponding statutes.

## **II TEXT**

Administrative Rule no. 1473-B/2008 of 17 December approved ICP-ANACOM's new fee model, based on the distinction between fees established according to administrative costs and fees due for the use of common resources.

This ICP-ANACOM's new fee model aims to fulfil the provisions of article 105 of the Electronic Communications Law; of article 19, no. 7 of Decree-Law no. 151-A/2000 of 20 July; of article 19, no. 3 of Decree-Law no. 150/2001 of 7 May; of article 19, no. 6 of Decree-Law no. 53/2009; of article 11 of Decree-Law no. 47/2000 of 24 March; of article 11 of Decree-Law no. 177/99 of 21 May; and of article 45, no. 1 of Decree-Law no. 59/2000 of 19 April.

However, concerning the procedure for the posting, settlement, and collection of fees due to ICP-ANACOM, the matter is not covered by Administrative Rule no. 1473-B/2008 of 17 December, which is limited to defining the amount of the fees, the periodicity of their settlement and, in the isolated case of fees due for the operation of the activity of provider of publicly available electronic communications networks and services, the sending to this Authority of a statement containing the amount of relevant revenues directly related to the activity's operation in the previous calendar year.

Considering:

- (1) The non-existence of a uniform regulation on the posting, settlement, and collection of fees to be collected by ICP-ANACOM, which prevents the transparent identification of the rules applying to the payment of the aforementioned fees;
- (2) The experience gathered concerning the posting and settlement of fees due for the use of radio spectrum;
- (3) That, due to the diversity of the fees due to ICP-ANACOM, it is important to define rules concerning their posting, settlement, and collection;
- (4) The adoption of those rules will be an essential complement to ICP-ANACOM's new fee model, regulating all internal and external posting, settlement and collection issues.

Also considering that such rules can be subject to an administrative regulation approved with basis on the legal powers stated in articles 9, paragraph a) and 26, paragraphs b) and g) of ICP-ANACOM's Statutes, since the matter is not under the scope of the principle of the reserve of the law.

Under ICP-ANACOM's regulatory powers, the regulation is created with the goal of simplifying the procedure for the posting, settlement, and collection of fees due to ICP-ANACOM, thus enabling operators, on one hand, to know the general regime applying to the posting, settlement, and collection of fees to be collect by ICP-ANACOM, and, on the other hand, to know each fee's substantive regime.

After submitting the corresponding draft Regulation to public consultation, under the terms of articles 9, paragraph a) and 26, paragraphs b) and g) of ICP-ANACOM of the corresponding Statutes, the Board of Directors of ICP-ANACOM decided to approve the following regulation on the settlement and collection of fees due to ICP-ANACOM:



## **REGULATION ON THE SETTLEMENT AND COLLECTION OF FEES DUE TO ICP-ANACOM**

### Article 1.

#### **Scope and empowering act**

The current regulation establishes the procedure of posting, settlement and collection of fees due to ICP-ANACOM and is approved under the provisions of paragraph a) of article 2 of Decree-Law no. 309/2001 of 7 December, of paragraph a) of article 9, of article 11 and of paragraph b) or article 26 of ICP-ANACOM's statutes, approved by Decree-Law no. 309/2001 of 7 December.

### Article 2.

#### **Fees**

1. - ICP-ANACOM is responsible for the posting, settlement, and collection of fees, associated to administrative costs and associated to criteria ensuring the optimal use of common resources.

2. – The following fees are associated to the administrative costs:

- a. Fees due for the issue of statements supporting rights granted to entities that provide electronic communications and services;
- b. Fees concerning the activity of electronic communications networks and services provider;
- c. Fees concerning the granting of rights of use of frequencies;
- d. Fees concerning the granting of rights of use of numbers and their reservation;
- e. Fees due within the scope of the regime of the amateur and amateur by satellite services, except when associated to ensuring the optimal use of common resources mentioned in paragraphs d) and e) of the following number;
- f. Fees applying to the installation of telecommunication infrastructures in buildings (ITED);
- g. Fees due for access to, and operation of, the activity of audiotext provider;
- h. Fees due for access to, and operation of, the activity of postal services.

3. - The following fees are associated with ensuring the optimal use of common resources:

- a. Fees for the use of frequencies for mobile electronic communications services;
- b. Fees for the use of frequencies for broadcasting services;
- c. Fees for registration of the personal radio service – citizen band (CB);
- d. Fee for the use of annual occasional call indicative (ICOA);
- e. Fee for the use of radio spectrum due by the holder of the national amateur certificate (CAN);
- f. Fees concerning the use of frequencies for the fixed service;
- g. Fees concerning the use of frequencies for radio-determination services;
- h. Fees concerning the use of frequencies for satellite radiocommunication services;
- i. Fees concerning the use of frequencies for other radiocommunication services;
- j. Fees applying to the radio data transmission system (RDS);
- k. Fees for the use of numbers;

Article 3.  
**Taxable person**

The taxable person is the natural or legal person, the assets or the organization, either in law or in fact, bound by the payment of fees due to ICP-ANACOM, either directly, as a substitute or as a subsidiary responsible person.

Article 4.  
**Posting**

1. - In the fees to be collected by ICP-ANACOM, the taxation amount is established under the terms of the legal and regulatory provisions applying to each type of fee.
2. - For the purpose of posting the fees due to ICP-ANACOM, the statement of the corresponding taxable persons is considered to be the information or documents that they send to ICP-ANACOM containing the elements concerning the basis of assessment of each type of fee.

Article 5.  
**Information duties**

1. - Taxable persons must provide to ICP-ANACOM with the declarations, information or documents necessary for the purpose of the corresponding posting and settlement, within the deadlines set in the legal and regulatory provisions applying to each type of fee.
2. - Not excluding other sanctions to be enforced should the duties foreseen in the previous number not be fulfilled, ICP-ANACOM, under the terms of articles 108, 113, no. 1 paragraph *ttt*), and 116 of Law no. 5/2004 of 10 February, as phrased by Decree-Law no. 176/2007 of 8 May, may impose compulsory pecuniary penalties in a daily amount between 10,000€ and 100,000€.

Article 6.  
**Audits**

1. - ICP-ANACOM may initiate auditing activities in order to collect the necessary elements for the posting and settlement of fees, and with the purpose of verifying the correctness and accuracy of the elements provided by the taxable persons.
2. - Such audits are conducted in compliance with the provisions of the General Tax Code regarding the tax procedure, the general provisions of the Tax Procedure and Process Code, and with the provisions of the Complementary Regime of Tax Inspection Procedure, which apply with adaptations resulting from the specificities of the legal tax relationship and of ICP-ANACOM's organic structure.
3. - For the purposes stated in the previous items, ICP-ANACOM may call upon its own services or external consultants, who are specifically qualified and authorized, namely a statutory auditor or a statutory auditor society.

4. - The people or entities involved in inspection activities are duly accredited by ICP-ANACOM.

Article 7.  
**Settlement**

The fees referred to in article 2 are settled by ICP-ANACOM through the issuance of a settlement and collection notice, which contains the settlement's statement, as well as the means to dispute the notified act and the deadline to do so.

Article 8.  
**Additional settlement**

1. - Once the audit mentioned in article 6 is concluded, and should it verify the existence of errors or omissions imputable to the taxable person that result in a loss for ICP-ANACOM, the settlement of additional fees, compensatory interest and expenses will be carried out.

2. - The taxable person will be notified, under the terms foreseen in article 22, to settle the payment within 30 days, otherwise subject to enforced payment.

3. - The grounds for the additional settlement, its amount, the payment deadline and warning of the consequences of the lack of payment, as well as the means to dispute the notified act and the deadline to do so, shall be stated on the notification mentioned in the previous number.

Article 9.  
**Expenses**

The taxable person is responsible for the expenses incurred by ICP-ANACOM in the performance of audits whenever the errors or omissions found are imputable to him/her as a fraud or serious negligence, not excluding any possible administrative offence responsibilities that may be due.

Article 10.  
**Compensatory interest**

When the settlement of part or of the entire fee due is delayed as a result of a fact that is imputable to the taxable person, compensatory interest is due, under the terms of article 35 of the General Tax Law.

Article 11.  
**Indemnity interest**

When the settlement is grounded on an error imputable to ICP-ANACOM that results in the payment of a fee higher than the one legally foreseen, compensatory interest is due, under the terms of article 43 of the General Tax Law.

Article 12.  
**Minimum limits**

1. - Fees will not be collected when the total value of the settlement notice is below €10, except when it results from adjustments stemming from an already concluded settlement.

2. - There will be no reimbursement when, following a review of the settlement, the amount of the fee to be returned is below €10.

#### Article 13.

#### **Compensation**

1. - Any possible credits from the taxable person, resulting from a reimbursement, settlement review, discretionary claim or judicial contestation will be applied to compensate debts to ICP-ANACOM, except if there is any ongoing discretionary claim, judicial contestation, judicial appeal, any objection to the decision, or if debts are being paid by instalments.

2. - The compensation of debts to ICP-ANACOM may be made at the request of the taxable person, even before the deadline for voluntary payment.

#### Article 14.

#### **Settlement review**

1. - The review of the settlement of fees may be made as a matter of regular procedure or upon request of the taxable person, within four years after the settlement, or at any time if the fee has not been paid yet, whenever there is evidence of any illegality, error or omission imputable to ICP-ANACOM or to the taxable person.

2. - The review of the settlement implies the additional settlement or the refund of the undue amount, and the payment of either indemnity or compensatory interest, depending on the case.

#### Article 15.

#### **Forfeiture of the right of settlement**

1. - The right to settle fees forfeits if the settlement is not validly notified to the taxable person within four years after the end of the year when the taxable fact occurred.

2. - In case there is evidence of an error in the taxable person's declaration, the deadline for forfeiture mentioned in the previous item is three years.

3. - The deadline for forfeiture is suspended when the taxable person is notified of the beginning of an audit. However, should the audit last more than six months after its notification, this suspension is ended, and the deadline counts from the beginning.

4. - The deadline for forfeiture is also suspended while the payment of the fee is pending on a judicial dispute, from the beginning of the respective process until a legally declared decision is reached, and in the case the settlement results from a claim, hierarchical appeal, discretionary claim request, or judicial contestation, from its presentation until a decision is reached.

#### Article 16.

#### **Payment deadlines**

Fees due to ICP-ANACOM are paid:

- a) Within thirty days after the issuance of the settlement and collection notice, with the exception mentioned in the following paragraph;
- b) During the granting of the request itself, in the case of the fees set in paragraphs a) to f) of no.1 of article 19 of Decree-Law no. 53/2009 of 2 March, and of the fees due for the granting of temporary certificates and licences.

#### Article 17.

##### **Payment**

Fees are paid using one of the following modalities, as stated in the settlement and collection notice:

- a) In cash, at ICP-ANACOM's services;
- b) By cheque or money order issued to ICP-ANACOM;
- c) At an ATM;
- d) By direct debit system;
- e) By postal collection.

#### Article 18.

##### **Non-compliance**

1. - When the taxable payer does not pay the fees due within the deadlines established in this regulation, interest on late penalty is due, under the terms foreseen in article 44 of the General Tax Law, not excluding the surcharges that may also be due, namely under no. 8 of article 19 of Decree-Law no. 151-A/2000 of 20 July.
2. - The debts that are not paid voluntarily are subjected to enforced payment.
3. - Not excluding the provisions of the previous numbers, lack of payment of fees due to ICP-ANACOM determines the enforcement of the provisions of article 110 of Law no. 5/2004 of 10 February, not excluding other foreseen penalty mechanisms.

#### Article 19.

##### **Payment by instalments**

1. – Payments due to ICP-ANACOM surpassing 1000 Euros (one thousand Euros) may be paid by monthly and equal instalments, the interest on late penalty of which will be settled at the rate of the debts to the State and to other public entities, in a maximum of ten instalments.
2. - Payment by instalments is subject to the presentation by the applicant of an assured guarantee, which will be a bank guarantee, security insurance, guarantee insurance or any other means liable to ensure the payment of the full amount of the fee and the interest, and accepted by ICP-ANACOM.
3. – The request for payment by instalments, as well as the guarantee referred in the previous item, must be presented to ICP-ANACOM at least eight days before the payment deadline.

4. - Lack of payment of any instalment brings the remaining instalments into immediate maturity.

Article 20.

**Enforced collection**

1. - Under the terms of article 2 paragraph a) of Decree-Law no. 309/2001 of 7 December, the lack of voluntary payment of fees due to ICP-ANCOM implies the issuance of a debt certificate, which is an executory title under tax lien and should contain the following elements:

- a. Identification of the debtor, including tax identification number;
- b. Origin of the debt and its amount;
- c. Settlement notice number;
- d. Elements that supported the settlement;
- e. Date after which interest is due and the amount that is the base for its assessment
- f. Any other information that is useful to the effective following of the execution;
- g. Signature of the issuer and date of the certificate.

2. - ICP-ANACOM sends a notice-letter to the taxable person, by registered mail, before issuing the debt certificate for the purpose of enforced collection.

Article 21.

**Time limit**

1. - Debts for fees due to ICP-ANACOM have a time limit of eight years, from the end of the year when the taxable fact occurred.

2. - Any summons procedure, hierarchical appeal, discretionary claim request, or judicial contestation, interrupts the counting towards the time limit.

3. - The time limit is suspended during the instalment payment period or until there is a legally declared decision, which ends the process, in the cases of complaint, hierarchical appeal, discretionary claim request, judicial contestation, judicial appeals or objection to decision, when the collection of the debt is to be suspended.

Article 22.

**Notifications**

The notifications mentioned in this Regulation are carried out by any means that ensure that the taxable person has knowledge of the notified act, namely by registered postal means or registered post with acknowledgement of receipt, by fax, or by electronic data transmission.

Article 23

**Supplementary law**

Supplementary provisions of the General Tax Law and of the Tax Procedure and Process Code apply with the necessary adaptations.

**Form mentioned in article 7 of the Regulation on the Settlement and Collection of Fees due to ICP-ANCOM**

Under the terms of article 68 and 70 of the Tax Procedure and Process Code, a **discretionary claim** may be presented within 120 days after the end of the voluntary payment deadline. The discretionary claim has no suspension effect on the collection, except if the appropriate guarantee is provided.

Under the terms of article 102 of the Tax Procedure and Process Code, a **judicial contestation** may be presented at the Tax Tribunal of Lisbon, within 90 days after the deadline date for voluntary payment, or, should the claim for refund be denied, within 15 days after the notification of the rejection.

Under the terms of article 68 no. 2 of the Tax Procedure and Process Code, no discretionary claim may be presented if a judicial contestation has been presented on the same grounds.