

Approval of decisions bringing changes to Guidelines on minimum content to be included in electronic communications contracts, resulting from Law no. 12/2008, of 26 February, and concerning the so-called “loyalty periods”

1. By determination of 4 June 2008, ICP-ANACOM’s Board of Directors approved:
 - A first draft decision on changes to Guidelines for minimum content to be included in electronic communications contracts (hereinafter referred to as “Guidelines”), resulting from Law no. 12/2008, of 26 February; and
 - A second draft decision on changes to Guidelines concerning the so-called “loyalty periods”.

As regards the 1st Draft Decision:

2. In compliance with articles 100 et seq. of the Code of Administrative Procedure, the provision in paragraph 1 of the draft decision on changes to Guidelines resulting from Law no. 12/2008 was submitted to a prior hearing of interested parties, which were granted a 20-working-day deadline to assess the matter in writing.
3. In this context, timely replies were received from AR TELECOM – Acessos e Redes de Comunicações S.A., Cabovisão – Televisão por Cabo, S.A., NACACOMUNIK – Serviços de Telecomunicações, Lda., Onitelecom Infocomunicações, S.A, Portugal Telecom, S.G.P.S., VODAFONE PORTUGAL – Comunicações Pessoais, S.A., Sonaecom – Serviços de Comunicações, S.A. and CATVP – TV Cabo Portugal, S.A..
4. According to procedures adopted by ICP-ANACOM on 12.02.2004, a report of the prior hearing was prepared, including criticism and suggestions made to the draft decision, as well as ANACOM’s view thereon.
5. Taking into account comments received, ANACOM hereby decides to confirm the draft decision, providing clarification on the means of communication to be used relatively to subscribers who have not made available their identification data to service providers.

As regards the 2nd Draft Decision:

6. Pursuant to the general consultation procedure laid down in article 8 of Law no. 5/2004 of 10 February (ECL), the draft decision on changes to Guidelines concerning the so-called “loyalty periods” was notified to the *Direcção-Geral do Consumidor* (Consumer Directorate), DECO, FENACOOP, UGC and ACOOP, having also been made available at ICP-ANACOM’s website, so that interested parties were able to assess the matter in writing, if they so wished.
7. In this context, timely replies were received from UGC, FENACOOP, Mr. Luís António Pinto da Silva, AR TELECOM – Acessos e Redes de Comunicações S.A., Cabovisão – Televisão por Cabo, S.A., Portugal Telecom, S.G.P.S., VODAFONE PORTUGAL – Comunicações Pessoais, S.A., Sonaecom – Serviços de Comunicações, S.A. and *Direcção Geral do Consumidor*.

8. According to procedures adopted by ICP-ANACOM on 12.02.2004, a consultation report was prepared, including criticism and suggestions made to the draft decision, as well as ANACOM's view thereon.
9. Taking into account comments received, ANACOM decided to make some amendments to the contents of the draft decision.

In the light of the above, pursuant to article 9 g) of the Statutes of ICP-ANACOM, attached to Decree-Law no. 309/2001, of 7 December and in the scope of powers granted under paragraph 1 h) and n) of article 6 of the above-mentioned Statutes, and the regulation objective provided for in paragraph 1 c) and paragraph 4 b) and d) of the ECL, the Board of Directors of ICP-ANACOM, to ensure compliance with obligations set out in Law no. 12/2008, of 26 February, hereby approves the following decision:

1. *To approve the Report of the Prior Hearing of Interested Parties on changes to Guidelines resulting from Law no. 12/2008.*
2. *To require providers of electronic communications services:*
 - a) To send to respective subscribers, within 30 days from notification of the final decision, a written communication on the new conditions, provided for in point 3 hereof, that apply to contracts as a result of Law no. 12/2008, which may be attached to invoices. As regards subscribers of pre-paid tariffs who have not made available their identification data to service providers, the referred communication may be replaced by an SMS indicating the provider's website where information provided for in point 3 hereof may be consulted;
 - b) To send to ICP-ANACOM, within 30 days from the expiry of the time limit referred to in point a), a communication informing that procedures determined therein have been complied with, attaching a copy of the communication sent to subscribers;
 - c) To adjust contracts to the new applicable rules and also to send this Authority redrafted versions of standard contracts for approval, pursuant to paragraph 4 of article 39 of the ECL, within 20 days from notification of the final decision.
3. *To amend the following points of Guidelines:*
 - *Point III, 1 E), Point IV E) and Point V E) - Period of validity of the contract, conditions for service and contract renewal, suspension and termination*

The following compulsory elements are hereby added:

- Stipulation that the service provision shall not be suspended without an appropriate advance notice, except for unforeseeable circumstances or force majeure.
- The contract must provide, as regards the situation of suspension of service due to non-payment, for a written notice to the subscriber, ten days ahead of the date on which the suspension is to take place, providing information on the reason for suspension and available courses of action to avoid suspension and to restore the service. The contract must state the means used to convey this notice to the customer.

- *Point III, 2 - Other information to be included in contracts concerning conditions for access and use of the service -, Point IV - Minimum content to be included in contracts for electronic communications services – and Point V - Minimum content to be included in contracts for Television Distribution Services*

The last but one item of point III, 2 (“Right of subscribers to pay and be discharged for only part of the amount due on their statement, whereby service suspension must be limited solely to services corresponding to the amounts in arrear, except in cases of fraud or systematic late payments) is replaced by the following two compulsory elements, which are added to Point IV and Point V:

- Stipulation that the service provision may only be suspended due to failure to pay any other service, even if included in the same bill, where these services are functionally indissociable.
- Right of subscribers to pay and be discharged partially, whereby the suspension of the service must be limited solely to services corresponding to amounts due, except where these services are functionally indissociable.

- *Point III, 1 H), Point IV H) and Point V H) - Conditions for billing*

The following compulsory element is hereby added:

- Contracts must stipulate that bills *must* be sent on a monthly basis.
 - *Point III, 2 - Other information to be included in contracts concerning conditions for access and use of the service -, Point IV - Minimum content to be included in contracts for electronic communications services – and Point V - Minimum content to be included in contracts for Television Distribution Services*

The following compulsory element is hereby added:

- Where the service requires the provision of a guarantee – this is possible only for contracts with clients that are not consumers or in situations of restoration of service, following an interruption resulting from breach of contract attributable to the customer, insofar as the customer does not opt for a bank transfer as means of payment -, the contract must include the applicable regime, defined according to Decree Law no. 195/99 of 8 June.
4. *To approve the Report of the Prior Hearing of Interested Parties on changes to Guidelines concerning loyalty periods.*
 5. *To amend Guidelines, so as to require the inclusion, in contracts for the provision of electronic communications services with loyalty periods, of clauses that clearly and undoubtedly stipulate:*
 - a) Justification for the loyalty period, concerning the granting of quid pro quo or of benefits to the customer, namely for equipment subsidizing, costs of acquiring customers or activating the service, or discounts engaged under contract;
 - b) The duration of the loyalty period;

- c) In case the quid pro quo consists of a blocked equipment, indication of the cost for unblocking;
- d) Indication of simple and swift means available to the customer to know the date of expiry of the loyalty period and the amount due for early termination of the contract;
- e) Indication of the means to calculate the amount due by the customer in case of early termination of the contract; and
- f) A clause that specifies that in case the customer chooses to pay the value of benefits initially granted, at the end of the loyalty period or in case of early termination of the contract, he/she is entitled to have the equipment unblocked for the amount indicated initially on the contract, and no additional amount may be required therefrom.

6. *To approve the altered version of Guidelines for minimum content to be included in electronic communications contracts and the overview table in Annex II to the Guidelines.*

7. *To determine that providers of electronic communications services must adjust their contracts to comply with points 3 and 5 hereof, and submit to this Authority for approval the redrafted versions of standard contracts for approval, pursuant to paragraph 4 of article 39 of the ECL, within 20 days from notification of the final decision.*