

INFORMATIVE NOTE



BANKING AND FINANCE

PAYMENT SERVICES - PROHIBITION OF CHARGING

Following the public discussions which took place after the approval of the Decree-Law no. 317/2009 of 30 October (Decree-Law 317/2009)¹, the Decree-Law no. 3/2010 of 5 January (Decree-Law 3/2010) was published in the Official Gazette, imposing a prohibition on credit institutions to charge on automated teller machines² (ATM) transactions, as well as, a prohibition on beneficiaries to charge payment transactions in automatic payment terminals and devices³.

Specifically, the Decree-law 3/2010 forbids (i) credit institutions to charge transactions in ATMs and (ii) payees⁴ to demand payers⁵ any charge for using a specific payment instrument.

Thus, regarding the prohibition referred to in (ii) above, the Decree-law 3/2010 corresponds to an option made under article 63(6)(b) *in fine* of the Decree-Law 317/2009. Indeed, in order to promote both competition and the resource to efficient payment instruments, the prohibition represents a limitation to the payees' rights on charging the payers for using a particular payment instrument.

In addition, it shall be referred that if a credit institution or the payee breach the prohibitions mentioned above, they will incur in administrative offence and shall be subject to fines up to € 3,740.98, for individuals, and up to € 44,891.81 for legal persons, as per Decree-Law 433/82 of 27 October⁶, as amended.

Finally, the attempt and negligence are also punishable being the above mentioned limits of fines reduced to 50%. By its turn, the supervision of the Decree-Law 3/2010, the appraisal of the administrative proceedings and the application of fines are pursued by the Bank of Portugal.

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¹ Which implemented the Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market in the Portuguese Jurisdiction.

² Covering, in particular the withdrawal, deposit and payment services transactions.

³ See our newsletter on the implementation of the Payment Services Directive, at http://www.plmj.com/xms/files/newsletters/2009/Novembro/Payment_Services_Directive.pdf.

⁴ As per the Decree-law 317/2009, payee means any natural or legal person who is the recipient of funds which were subject of a payment transaction.

⁵ As per the Decree-law 317/2009, payer means natural or legal person who holds a payment account and allows a payment order from that payment account, or, where there is no payment account, a natural or legal person who gives a payment order.

⁶ This Decree-Law establishes the administrative offence regime and its proceedings.