

Bank of Portugal Notice regulates exclusion from restricted networks

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A. CONTEXT

Notice no. 3/2023 of 14 March 2023 from the Bank of Portugal came into force on 15 March 2023, regulating the limited network exclusion as provided for in the Legal Framework for Payment Services and Electronic Money (hereinafter the "**Notice**"), and setting the terms under which the services based on specific payment instruments that can only be used in a limited way and that meet certain requirements described in the law are excluded from the scope of the Legal Framework for Payment Services and Electronic Money, and as such their provision does not require an authorisation pursuant to the same.

Pursuant to Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 (hereinafter the "**PSD2**") this exclusion may include loyalty cards of certain stores, fuel cards, membership cards, public transport passes, parking tickets or meal vouchers, among others.

The Notice now in force transposes into national law the Guidelines on exclusion for limited network under the PSD2 (EBA/GL/2022/02) published on February 24, 2022 by the European Banking Authority (hereinafter, the "**Guidelines**").

In fact, the Bank of Portugal, as the national authority responsible for overseeing the Legal Framework for Payment Services and Electronic Money (hereinafter the "**RJSPME**"), has aligned itself very closely with the terms of the European Banking Authority's guidelines, providing greater certainty and predictability to issuers of payment instruments, particularly to those carrying on their business in several member states.

The approval of the Notice will materialize the rules on exclusion provided for in the RJSPME, which, in compliance with the DSP2, excludes limited payment networks from its scope of application (see article 5(1)(k)(i) and (ii) of the RJSPME), but at the same time requires that excluded entities whose total value of payment transactions exceeds one million euros over a 12-month period to notify the Bank of Portugal of the terms on which their services are provided (see article 6(1) and (5) of the Notice).

B. SCOPE

The Notice is applicable to the exclusion for limited network, as described in RJSPME and DSP2 and further elaborated by the European Banking Authority in its Guidelines.

In this sense, the Notice covers issuers of payment instruments that can only be used in a limited way and that are (see article 2 of the Notice):

- a) instruments allowing the holder to acquire goods or services only in the premises of the issuer or within a limited network of service providers under direct commercial agreement with a professional issuer;
- b) instruments which can be used only to acquire a very limited range of goods or services.

C. COMMUNICATION PROCEDURE WITH THE BANK OF PORTUGAL

Pursuant to article 6, no. 1 of the RJSPME, whenever a service provider undertakes the activity covered by the limited network exclusion and, in a 12-month period, its payment operations exceed one million euros, a communication must be sent to the Bank of Portugal, which must specify the exclusion under which it operates and describe the services provided.

Under the terms of the Notice that now regulates the details of this reporting procedure, this notification must be made within 30 days of reaching the amount of one million euros in payment transactions.

The communication should be supported by extensive information about the payment instruments, the issuer's business activity and the goods and services that may be purchased, such as (cf. Article 5(2) of the Notice): an indication of the volume and value of payment transactions that will take place annually with the payment instruments, the maximum amount to be credited on the payment instruments, a description of the risks to which a customer is exposed when using the specific payment instrument and technical information on the use of the payment instrument (transfer of funds, technical and contractual restrictions and means of payment covered)

If the exclusion relates to instruments that only allow the acquisition of goods or services by their holder in the premises of the issuer or in a limited network of service providers directly linked by a commercial agreement to a professional issuer (cf. article 5(1)(k)(i) of the RJSPME), additional elements must be provided, referring to the relationship with the suppliers of goods and services operating in the limited network (cf. article 5(3) of the Notice).

Although this communication needs to be made only once by each entity in its scope, the Notice requires that these entities submit additional communications whenever a substantial change occurs in the terms of their business that influences the previously sent communication, with at least 30 days prior notice (see article 6 of the Notice).

D. FORMAT OF COMMUNICATION

The communication may be sent by e-mail to comunicacao.rederestrita@bportugal.pt or by post to the Prudential Supervision Department of the Bank of Portugal.

The instruments covered by the exclusion will be included in the register of the Bank of Portugal and in the central register of the European Banking Authority, for public consultation in relation to the activity provided and the use of such instruments throughout the European territory.

Abreu Advogados's APDFin team assists the entities covered by the referred regulation, aiming to ensure the compliance with these new rules that will be implemented in our market, including not only the preparation and review of the necessary documentation, but also the training of legal and compliance teams and their employees in the relevant business areas.

E. EFFECTS ON PREVIOUS COMMUNICATIONS

For issuers of payment instruments who had already sent a communication to the Bank of Portugal under the terms of article 6(1) of the RJSPME, the Notice determines that it will be mandatory to submit a new communication, adapted to the terms now approved, within 90 days of the entry into force of the law.

Abreu Advogados's APDFin team assists the entities covered by the referred regulation, aiming to ensure the compliance with these new rules that will be implemented in our market, including not only the preparation and review of the necessary documentation, but also the training of legal and compliance teams and their employees in the relevant business areas.



Thinking about tomorrow? Let's talk today.

Diogo Pereira Duarte – Partner
diogo.p.duarte@abreuadvogados.com

Rodrigo Formigal – Partner
rodrigo.formigal@abreuadvogados.com

Isabel Pinheiro Torres – Associated Partner
isabel.p.torres@abreuadvogados.com

João Diogo Barbosa – Trainee Lawyer
joao.d.barbosa@abreuadvogados.com