

1ST OF FEBRUARY 2022

CONSUMERS RIGHTS

DECREE-LAW 109-G/2021, OF THE 10TH OF DECEMBER

Decree-Law No. 109-G/2021, of the 10th of December, partially transposes the EU Directive 2019/2161, of the 27th of November – Omnibus Directive – regarding consumer protection, which amended several European directives with the purpose of ensuring a better enforcement and modernisation of EU consumer protection rules.

Besides the partial transposition of the Omnibus Directive, the decree-law under analysis amends the following legislation:

I. Law No. 24/96, of the 31st of July, which establishes the Consumer Protection Law:

It is now adapted to goods with digital elements and digital content and services, establishing the information requirements that suppliers of goods or service providers must, both at the stage of negotiation and of conclusion of the contract, provide to consumers in a clear and objective manner.

Prohibits practices of planned obsolescence, in which the professional adopts techniques that aim to deliberately reduce the useful life of a consumer good in order to stimulate its replacement.

II. Decree-Law No. 446/85, of the 25th of October, which institutes the legal regime for general contractual terms:

Introduces as a “very serious” administrative offence, punishable under the terms of the RJCE¹, the use of clauses that are absolutely prohibited. It also stipulates that negligence is punishable under the RJCE.

Therefore, the consequences associated with the use of unfair general contractual terms

¹ Legal Regime of Economic Offences, approved by Decree-Law No. 9/2021.

are reinforced, thus discouraging their use.

III. Decree-Law No. 138/90, of the 26th of April, which regulates the indication of the prices of goods intended for retail sale:

Introduces the obligation to indicate the lowest price previously charged², under the terms of Decree-Law No. 70/2007, of the 26th of March, regarding any information on a commercial practice with a price reduction, regardless of the means of communication. Additionally, it also imposes an obligation to make visible, in lists or posters, the prices of all services, whatever their nature, in the place where they are offered or supplied to the consumer.

IV. Decree-Law No. 70/2007, of the 26th of March, which regulates commercial practices with price reductions in retail sales practiced in commercial establishments, with a view to the disposal of stocks, increase in sales volume or to promote the launch of a product not previously commercialised by the economic agent:

In addition to the definition of "lowest price previously charged", it also introduces the definition of "perishable agricultural and food products"³.

Regarding the sale with price reduction, it also imposes the duty to indicate unequivocally the type of sale, the type of products, the starting date, and the duration period.

It is also required that the new price and the previous lower price be clearly displayed on signs, labels, or lists, without prejudice to the additional and optional indication of the reduction percentage.

It expressly prohibits the use of different measurement units and the comparison of products under different conditions.

² "Lowest price previously charged" means the lowest price at which the product was sold during the last 30 consecutive days preceding the application of the price reduction.

³ "Perishable agricultural and food products" means agricultural and food products which, by their nature or their processing stage, are likely to become unfit for sale within 30 days of their harvest, production or processing.

V. Decree-Law No. 57/2008, of the 26th of March, which establishes the applicable regime for unfair commercial practices by companies in relations with consumers, occurring before, during or after a commercial transaction regarding a good or service:

Extends the scope of application of the regime, enshrining a broader concept of "Product" to include **digital content and services**, adapting to new requirements of consumer protection against unfair commercial practices, in particular to practices related to the digital reality and introducing the definition of "Classification"⁴ and "Online Marketplace"⁵.

It classifies as a Misleading Action any activity promoting a good as being identical to a good marketed in other Member States where that good is significantly different in composition or characteristics, unless justified by legitimate and objective factors.

Added to the list of Actions considered Misleading in all circumstances, are the practices of reselling tickets, practices related to online revision and gift advertisements and classifications.

On misleading omissions, it introduces a duty for the online marketplace provider to inform the consumer whether or not a third-party offering goods or services through its online marketplace is professional, in order to protect the consumer.

It gives consumers the right to obtain an appropriate reduction in price or termination of the contract for products purchased as a result of an unfair commercial practice, without prejudice to the consumer's right to compensation under the general terms.

In relation to surveys and ratings, the duty to inform consumers about the main parameters that determine the rating of the products submitted as a result of the survey and the importance when compared to other parameters and the duty to indicate whether and how consumer ratings are verified are both enshrined

⁴ "Classification " shall mean the relative importance attached to the products as they are presented, organised or communicated by the trader, regardless of the technological means used for such presentation, organisation or communication.

⁵ "Online marketplace" means a service using software, including a website, part of a website or an application, operated by or on behalf of a trader, which allows consumers to conclude distance contracts with other traders or consumers.

VI. Decree-Law No. 24/2014, of the 14th of February, on contracts concluded at a distance and away from business premises

This Decree-Law extends its scope of application, becoming applicable also to contracts where the supplier of goods or service provider provides or undertakes to provide digital content, when not delivered by physical means, or a digital service, and the consumer provides or undertakes to provide personal data, in accordance with the RGPD⁶.

It broadens the content of pre-contractual information, namely regarding the presentation of different bids or price reductions.

Without prejudice to the general rule of the right to withdraw from distance or off-premises contracts within a period of 14 days, it also grants a period of 30 days to do so, in specific cases of off-premises contracts concluded at the consumer's home or as part of package tours.

PARES | Advogados is available to provide information on this and other topics in a more adequate and suitable way to the reality of each client and is able to help its clients on any topic regarding consumer rights.

Pedro Carreira Albano
pca@paresadvogados.com

Rosário Tavares de Pina
rtp@paresadvogados.com

This Newsletter is addressed to clients and lawyers and does not constitute advertising, being prohibited its copy, circulation or other form of reproduction without the express authorization of its authors. The information provided is generic and does not dispense the need to resort to legal advice prior to any decision being taken regarding the matter in question. For further information, please contact **Pedro Carreira Albano** (pca@paresadvogados.com) or **Rosário Tavares de Pina** (rtp@paresadvogados.com).

⁶ General Data Protection Regulation.