



CONSUMER LAW

NEW RULES OF DISTANCE CONTRACTS

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This new law repeals the earlier Rules on Protection of Consumers in Distance Contracts (Decree-Law 143/2001) and promotes transparency in commercial practices at the same time as safeguarding the interests of consumers in distance contracts and in off-premises contracts.

The new legislation brings many changes that will have a sharp impact on the practices of traders of goods and providers of services.

First of all, the right of the consumer to receive adequate pre-contractual information is strengthened. The following obligations on traders providers are an example of this: (i) provision of information on the components of the price of the charges, failing which the consumer will not be obliged to pay them, (ii) , indication, on the respective website, at the latest at the beginning of the ordering process, whether any delivery restrictions apply and which means of payment are accepted, (iii) , information on the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader.

The new law introduces protection for consumers against mistakenly entering into online contracts. In such situations,

the trader must clearly identify on its website the function/button that makes it possible to conclude the order. This must be identified in a way that is easy to read, using the expression «order with payment obligation», or similar wording and this obligation applies whenever the conclusion of the order implies a payment to the trader. When it comes to contracts made by telephone, the legislation establishes that the consumer is only bound after signing the offer or sending his or her consent in writing.

The legislation also provides that the trader provider must confirm the conclusion of the contract within five days of its conclusion and, at the latest, upon delivering the goods or immediately prior to beginning the provision of the services. The necessary pre-contractual information must be sent with this confirmation if it has not been sent prior to concluding the contract. The information must be sent in a format that makes it possible to store and reproduce such information without alteration.

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Another change made in this area is that the service provider must inform the consumer that he or she will have to pay an amount which is in proportion to what has been already been provided, whenever the consumer exercises the right of withdrawal after having presented a request for immediate provision of services.

The legislation also provides that the trader provider must annex to the contract a specific form, approved by law (annexed to the law in question) to exercise the right of withdrawal.

The legislator took this opportunity to make it clear that the trader must inform the consumer that, if the consumer exercises the right of withdrawal, the consumer must bear the costs of returning the goods. The amount paid for the products or services in question, will be returned by the trader within a maximum of 14 days.

Indeed, with the exception of cases in which the trader offers to collect the goods, it is only possible to retain the reimbursement until the goods are received or until the consumer presents proof of return of the goods. If the trader does not comply with the obligation to reimburse the costs, they must pay double the amounts paid by the consumer within 15 days (which are business days, unlike the rest of the periods). This obligation is without prejudice to any right that the consumer may have to moral or financial damages.

If the trader does not provide adequate information to the consumer on the right of withdrawal, the period for this right to be exercised is extended to 12 months. However, if the trader complies with the duty to inform in the meantime, the 14 days begin to run from the date of compliance.

If the trader makes it possible to exercise the right of withdrawal electronically on its website and the consumer actually does so, the trader is under an obligation to acknowledge receipt of the communication from the consumer

within 24 hours on a durable medium (a format that can be saved, consulted and reproduced without alteration for a period of time adequate for the purposes of the information).

The exercise of the right of withdrawal now implies the automatic termination of any ancillary contracts, without the right to compensation or payment of any charges, except in cases established by law.

This legislation also determines that, whenever there is fraudulent use of a credit or debit card by another, the consumer may request to the annulment of the payment made and the consequent reimbursement of the amounts debited for payment.

This law also makes ASAE (the Portuguese Authority for Food and Economic Safety) responsible for promoting recourse to out-of-court dispute resolution mechanisms in respect of matters arising from the application of the law.

As a final note, we should point out that, although Decree-Law 24/2014 was published on 14 February, it only comes into force on 13 June 2014.

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