



CONSUMER LAW AND PRODUCT LIABILITY

FEBRUARY 2015

CHANGES TO THE RULES ON COMMERCE, SERVICES AND RESTAURANTS

This Decree-Law aims to simplify procedures (by eliminating or reducing them) and introduce a degree of deregulation of the activities. In return, greater responsibility is placed on economic operators, through an increase in supervision and in the amounts of the fines applicable.

Decree-Law 10/2015, which governs the access to and exercise of the economic activities of commerce, services and restaurants, was approved on 16 January of this year.

This Decree-Law aims to simplify procedures (by eliminating or reducing them) and introduce a degree of deregulation of the activities. In return, greater responsibility is placed on economic operators, through an increase in supervision and in the amounts of the fines applicable.

This Decree-Law is also intended to bring about a (partial) systemisation/compilation of the rules on the activities of commerce, services and restaurants. Therefore, it contains general rules on access to and exercise of the activities of commerce, services and restaurants, standard procedures, requirements for the special exercise of some of these activities as well as references to other legislation applicable to these matters.

In light of these objectives, Decree-Law 10/2015:

- Amends the legislation on the opening hours of shops and stores, simplified business information, commercial practices with price reductions, access to and exercise of various economic activities in the context of the "zero licensing" initiative and use of LPG and NG as fuel for vehicles.

- Approves the Legal Rules on Access to and Exercise of Activities of Commerce, Services and Restaurants (*Regime Jurídico de Acesso e Exercício de Atividades de Comércio, Serviços e Restauração* "RJACSR") which, besides regulating the access conditions and general and special conditions to carry on the activities of commerce, services and restaurants, also sets out the framework for sanctions and prevention.

- Repeals various rules on matters connected to access to and exercise of activities of commerce, services and restaurants, which are now governed by the RJACSR.

Among the changes introduced by this Decree-Law, we would highlight some issues relating to opening hours of shops and stores, to commercial practices with price reductions and to the creation of standard procedures for access to activities, as we will now explain.

1) Opening hours of shops and stores:

- The opening hours of shops and stores are now unrestricted. However, Municipal Councils may restrict opening hours in justified cases, based on reasons of the safety and quality of the lives of the public.

- The definition of opening hours or their alteration is no longer subject to any formality or procedure as the requirement for prior communication has been eliminated. However, the requirements to post a notice with the opening hours visible from the exterior remains in place.

2) **Retail sale with price reduction:**

- The rules apply not only to retail sales in shops and stores and services, but also retail sales made at a distance, in the home or by other mean outside shops and stores.

- Holding sales is no longer limited to the periods defined by law so they may be held at any time of the year. However, the total duration of the sales periods may not exceed four months a year.

This means the distinction between sales and promotions is blurred because sales no longer need to be held at the end of the season in the periods defined by law.

The distinction between sales and promotions lies in their objective, maximum duration and the question of the prohibition on sales at a loss.

The aim of sales is to sell out stock as quickly as possible and they are not subject to the rules on selling at a loss, (contained in the Rules on Individual Restrictive Trade Practices - *Regime das Práticas Individuais Restritivas do Comércio* - Decree-Law 166/2013). Furthermore, sales may only be held for a maximum of four months a year. The aim of promotions is to boost the sales of particular products or to launch new products. Promotions are subject to the prohibition on selling at a loss and have no maximum duration.

The distinction in relation to liquidation sales is simpler because, despite not being subject to the prohibition on selling at a loss or to the maximum duration of four months, they are exceptional in character and have a very specific purpose. Their aim is to sell out all or part of the existing stock quickly for reasons leading to the interruption of sales or activity at the shop or store.

- The requirement that the reduction should be real remains in place. The earlier price or the price to be charged after the first period of reduction is used as a reference to establish the existence of the reduction.

- As under the previous rules, products expressly acquired for the purpose may not be sold in sales.

- The prohibition on selling in sales products that, in the month prior to the sales period, were on sale with a price reduction or more advantageous conditions is lifted.

- Selling in sales or in liquidation is subject to a declaration by the seller addressed to ASAE through the *Balcão do Empreendedor* (Entrepreneur Counter).

3) **Procedures established in the RJACSR for access to activities:**

- The principle of freedom of access to and exercise of the economic activities applies. Administrative permission is only required in exceptional cases, for public interest reasons.

- The requirements for access to the activities regulated in the RJACSR, for alteration of the conditions of their exercise and for a change in the ownership of shops and stores, when they exist, consist, in most cases, of a simple prior communication presented to the appropriate municipality, through the *Balcão of the Empreendedor*. The legislation lists the activities to which this requirement applies.

- Prior authorisation is only required to carry on activities (i) of restaurants (when an application is made for waiver of compliance with certain requirements), (ii) of wholesale and storage or foodstuffs of animal origin that require regulated temperature conditions, and (iii) wholesale and retail trade, and storage of food for animals.

- The opening or alteration shopping centres with a lettable area of at least 8000 m2 and large supermarkets that are not inside shopping centres are subject to a joint authorisation procedure.

- With the exception of inspection and sanction procedures, administrative procedures are handled at the *Balcão do Empreendedor*.

Decree-Law 10/2015 comes into force on 1 March 2015, with the exception of the rules on approval of administrative regulations and the requirements to hold the position of technician responsible for funeral activities, which come into force on 17 January 2015.

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