

INFORMATIVE NOTE

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CONSUMER LAW

NEW EUROPEAN UNION DIRECTIVE ON CONSUMERS' RIGHTS IS APPROVED

On 10 October 2011 the Council of Ministers of the European Union approved a new Directive on consumer rights in the European Union. This directive is aimed at strengthening the rights of consumers in all Member States of the European Union by bringing uniformity to the rules applicable to all European citizens with a special focus on the online shopping sector.

The said Directive, which should be published in the Official Journal of the European Union by the end of the year, is to be transposed into national law in the Member States by the end of 2013, thus bringing an end to the corresponding legislative process. This means that we can expect general application across the Member States of the European Union from around the middle of 2014. In any event, it is already certain that the new Directive brings changes that contribute a great deal to real protection and a strengthened defence of the rights of European consumers. They also bring the corresponding additional responsibilities to traders which will be explained below.

The new directive will replace the current Directive 97/7/EC, on the protection of consumers in distance contracts, as well as Directive 85/577/CEE, on contracts negotiated away from business premises (Directives transposed into Portuguese law by Decree-Law 143/2001 of 26 April, on distance contracts, amended and re-enacted by Decree-Law 82/2008 of 20 May). At the same time, Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees, and Directive 93/13/EEC on unfair terms in consumer contracts

(transposed into Portuguese law by Decree-Law 67/2003 and Decree-Law 446/85, respectively), will remain in force despite the modifications they will suffer as a result of the introduction of the new EU legislation referred to above. Among the more important changes, the following merit particular attention:

■ Firstly, as to the right to withdraw from a sales contract and the respective return:

- A period of **14 days from the moment of receipt of the products by the consumer** is established for the consumer to be able to withdraw from the contract and return the products bought [under distance contracts or contracts negotiated away from business premises], with the right to obtain a full refund. In contrast, the previous EU law provided for a period of only 7 days (for this situation Portuguese law has provided for the said period of 14 days since Decree-Law 82/2008 of 20 May);
- It should be noted that if traders do not clearly inform consumers of the said right to withdraw, the Directive provides for **added protection** by extending the period for withdrawal and return to one year;
- Extension of the right of withdrawal to online auctions (e.g. EBay, *inter alia*), as long as the goods are bought from a professional trader
- Existence of a form for cancellation of the contract/return of the products, made available online by the seller to the consumers (which the consumers will be required to use);

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Despite the fact that the provisions of the new Directive have, to a certain extent, been softened by successive revisions made by the EU institutions, this new piece of legislation still brings in very significant changes.

- Establishment of the general rule that the costs of return are to be paid by the traders, except if a clear and explicit agreement to the contrary was made between the parties;
- On deadlines for refunds by traders, the previous period of 30 days has been cut to 14 days, from the date on which the trader is informed of the decision to cancel the order by the consumer;
- Retailers also now have to comply with an increased duty of information to be provided clearly and thoroughly on the total price of the transaction, including all extra associated taxes and costs. The consumer should not pay any surcharge for using a credit card or phone lines for direct assistance (in addition to the actual cost of its use for the trader);
- Also on the issue of online shipping, the Directive bans pre-ticked boxes for options associated with the principal product the consumer wishes to buy (for example, if a consumer wants to buy an electronic product, the trader cannot have the corresponding batteries pre-selected. In other words, it must be left to the consumer to make this choice);

■ Finally, it should be noted that the Directive also addresses **digital content traders** and provides that, in selling such content, consumers must be provided with all necessary information in respect of compatibility of hardware and software and/or other relevant technical information.

Despite the fact that the provisions of the new Directive have, to a certain extent, been softened by successive revisions made by the EU institutions, this new piece of legislation still brings in very significant changes. On the one hand, these changes foster the growing trend towards defence and protection of consumer rights and, on the other hand, require an effort on the part of traders to analyse their selling procedures and, in particular, their terms and conditions of offer and sale of goods and services so as to comply with the new legal rules that will soon govern this area within the EU.

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