



TECHNOLOGY, MOBILITY AND COMMUNICATIONS

New rules on consumer rights when buying and selling digital goods, content and services

Introduction

[Decree-Law 84/2021](#) was published on October 18 and it has reinforced consumer rights enshrining their protection by implementing a legal framework that introduces important changes regarding the warranty of goods. This law also reinforces the protection framework in contracts for the supply of digital content and services introducing innovative provisions in this area.

"The warranty period for goods provided for in Decree-Law 67/2003 has been extended, and distinct periods are set exclusively for digital content and services."

Decree-Law 84/2021 of 18 October incorporates into Portuguese law Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods. This Directive amended both Regulation (EU) 2017/2394 and Directive 2009/22/EC and repealed Directive 1999/44/EC of the European Parliament and of the Council of 25 May. It also incorporates Directive (EU) No 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects of the supply of digital content and services.

This law repeals articles 9-B and 9-C of [Law 24/96](#) of 31 July and [Decree-Law 67/2003](#) of 8 April, and becomes effective on January 1st 2022.

Regarding its scope and effectiveness, Decree-Law 84/2021 provides that:

- i) the provisions relating to contracts for the sale and purchase of goods (movable and immovable) apply to contracts executed following its effective date; and
- ii) the provisions regarding contracts for the supply of digital content and services apply to (a) contracts for an indefinite or fixed term executed prior to the effective that provide for the continuous supply or for a series of individual acts of supply of digital content or services, but only with respect to digital content or services that are supplied after the effective date of the relevant Decree-Law, and to (b) contracts executed after its entry into force.

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Main Changes

The digital dimension

The key innovation introduced by Decree-Law 84/2021 is the extension of the concept of "goods" to cover consumer goods that incorporate or are interconnected with digital elements, for example, applications, video, audio and music files, digital games, and e-books.

Mandatory conformity requirements for goods

This Decree-Law provides for the principle of conformity of goods, requiring the professional to deliver goods that comply with certain subjective and objective requirements. The professional must also ensure that certain requirements regarding goods with digital elements are met.

Extension of the warranty period

This Decree-Law foresees the following regarding warranty periods in respect of movable goods:

- i) Extension of the professional liability period from 2 to 3 years as from the delivery of the goods, while maintaining the legal presumption in favour of the consumer that any lack of conformity of the goods revealed in the first 2 years is presumed to exist since the date of its delivery.
- ii) Establishment of distinct liability periods regarding goods with embedded digital elements.
- iii) Different liability terms according to the type of supply (a single act, a series of individual acts or continuous), including as regards the burden of proof.

As to immovable goods, the warranty period is extended to 10 years for lack of conformity in structural construction elements and the previous period of 5 years is maintained for all other cases.

Consumer rights

Decree-Law 84/2021 establishes an order of precedence for consumer rights and sets out the conditions and requirements to be met for applying each remedy set out in this Decree-Law.

Under the new framework, the consumer will have the right to reject the goods and request the immediate replacement of the same or to repudiate the agreement when the non-conformity becomes apparent within the 30 days of delivery of the goods.

New obligations have been introduced regarding termination of the contract and others already in place have been strengthened. These include the time limit for repair and replacement which, as a general rule, should not exceed 30 days. Under the new legislation, when the consumer opts for the repair of the movable good, an additional warranty period of 6 months is provided for, up to a maximum of four repairs.

Finally, this legislation removes the obligation on the consumer to report the defect to the seller by repealing the deadlines for reporting defects established under the previous rules.

After-sale service and availability of spare parts

Under this legislation, 10 years after placing the last unit of the good on the market, the producer is under the obligation to:

- i) Make spare parts available to facilitate the repair of the goods and contribute to their greater durability; and
- ii) Provide an after-sales assistance service for movable goods subject to registration.

Producer's liability and commercial guarantee

The Decree-Law incorporates the solutions provided for in Decree-Law 67/2003 regarding the direct liability of the producer. However, it extends the scope of these solutions to digital goods, content, and services. The Decree-Law also maintains the voluntary guarantee, which is now called “commercial guarantee” and imposes more requirements on the producer in terms of information duties.

Liability of online sellers

Under the new rules, consumers may hold accountable sellers who make goods available online alongside the trader for the lack of conformity of the goods when the former are considered contractual partners of the traders. Online sellers are considered contractual partners of the professionals whenever they exert a predominant influence over the execution of the contract. This influence is measured in terms of who (i) provides the exclusive means for the execution of the contract and payment for the goods, (ii) determines the essential terms of the contract or the price of the goods, and (iii) is the focus of the associated advertising.

Supervision

Another change is the sanctions framework contained in the Decree-Law. Under this framework, (i) the infringement of certain legal provisions constitutes a serious economic offence and (ii) attempt and negligence are now punishable under the Legal Framework for Economic Offences.

The legal framework for serious economic offences establishes amounts of fines that differ depending on whether the offence is committed by (i) an individual (fines between €650 and €1500); (ii) a micro-undertaking (fines between €1700 to €3000); a small enterprise (fines between €4000 to €80000); a medium-sized enterprise (fines between €8000 to €16,000); and a large enterprise (fines between €12,000 to €24,000). ■