



DISPUTE RESOLUTION

Abusive clauses – new rules and a control commission

In order to implement the administrative system for the control and prevention of unfair contract terms established by Law 32/2021 of 27 May, Decree-Law 123/2023 of 26 December establishes the General Contract Terms Commission (the “Commission”). Decree-Law 123/2023 entered into force on the day immediately following its publication, i.e., 27 December 2023.

The Commission is an independent administrative body of an advisory nature. It will work closely with the members of the Government responsible for justice and consumer protection and will be operational 90 days after the entry into force of the Decree-Law. The Commission will have residual powers, mainly in areas of activity not covered by legislation providing for such control. This will enable it to reduce disparities between sectors and increase consumer protection in the face of the proliferation of contracts containing general contractual clauses.

Decree-Law 123/2023 also establishes the principle of cooperation between the Commission and the competent regulatory and market control bodies for specific sectors. The aim of this cooperation is to draw up standard contracts for voluntary use in regulated sectors or sectors subject to specific legislation, in accordance with the provisions of the legal framework for general contractual clauses.

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The various tasks carried out by the Commission include:

- analysing contracts containing general contractual clauses or model general contractual clauses for future use;
- making recommendations for the withdrawal or amendment of such clauses;
- notifying the Public Prosecutor’s Office of non-compliance with the obligation not to use general contractual clauses that have been definitively prohibited by a final judgment;
- issuing opinions, at the request of the courts, on the prohibition of general contractual clauses.

Decree-Law also creates the website on general contractual clauses (Portal das Cláusulas Contratuais Gerais). This website will publish these court decisions, the Commission's opinions and recommendations.

Existing legislation already provides for the registration and publication of court decisions prohibiting the use or recommendation of certain general contractual clauses or declaring the nullity of clauses included in individual contracts. However, Decree-Law 123/2023 also creates the website on general contractual clauses (Portal das Cláusulas Contratuais Gerais). This website will publish these court decisions, the Commission's opinions and recommendations, as well as standard contracts resulting from the cooperation between the Commission and regulatory or market control bodies. ■