

**International
Comparative
Legal Guides**



Consumer Protection

2024

Fifth Edition

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1 General

1.1 What legislation, regulations and guidelines are relevant to consumer protection in your jurisdiction?

In Portugal, consumer protection is governed by several pieces of legislation. Notable among these are the following, listed chronologically:

- Decree-Law no. 446/85, of 25 October, which establishes the regime for general contractual clauses;
- Decree-Law no. 383/89, of 6 November, which transposes Council Directive 85/374/EEC of 25 July 1985, on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products;
- Decree-Law no. 138/90, of 26 April, which mandates that goods intended for retail sale must display their selling price to the consumer;
- Decree-Law no. 330/90, of 23 October, which approves the advertising code;
- Law no. 23/96, of 26 July, which lays down rules for the provision of essential public services to protect users;
- Law no. 24/96, of 31 July, which establishes the regime applicable to consumer protection (the “**Consumer Protection Law**”);
- Decree-Law no. 7/2004, of 7 January, which transposes Directive 2000/31/EC, of the European Parliament and of the Council of 8 June 2000, on certain legal aspects of information society services, particularly electronic commerce, in the Internal Market;
- Decree-Law no. 156/2005, of 15 September, which mandates the availability of a complaints book to all suppliers of goods or service providers who have contact with the general public;
- Decree-Law no. 95/2006, of 29 May, which transposes Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002, concerning the distance marketing of consumer financial services;
- Decree-Law no. 70/2007, of 26 March, which regulates commercial practices involving price reductions;
- Decree-Law no. 57/2008, of 26 March, which transposes Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, concerning unfair business-to-consumer commercial practices in the Internal Market (the “**Unfair Commercial Practices Act**”);
- Decree-Law no. 133/2009, which transposes Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008, on credit agreements for consumers;

- Decree-Law no. 166/2013, of 27 December, which approves the regime applicable to individual practices that restrict trade;
- Decree-Law no. 24/2014, of 14 February, applicable to distance and off-premises contracts, transposing Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011, on consumer rights;
- Law no. 144/2015, of 8 September, which transposes Directive 2013/11/EU, of the European Parliament and of the Council, of 21 May 2013, on alternative dispute resolution for consumer disputes; and
- Decree-Law no. 84/2021, dated 18 October, which regulates consumer rights in the purchase and sale of digital goods, content and digital services, transposing Directives (EU) of the European Parliament and of the Council of 20 May 2019, 2019/770, on certain aspects concerning contracts for the supply of digital content and digital services, and 2019/771, on certain aspects concerning contracts for the sale of goods (the “**Consumer Rights Decree-Law**”).

At a less formal level, the General Consumer Directorate (“**DGC**”) has been offering a diverse range of guides and guidelines on its website (<https://www.consumidor.gov.pt/>) over the years. These resources cover a wide array of topics, such as food, e-commerce, advertising, safety, tourism, and travel.

1.2 What is the definition of “consumer” (i.e., who does consumer protection law protect)?

According to the Consumer Protection Law, a consumer is defined as any individual or entity to whom goods or services are supplied, or any rights transferred, with the intention of non-professional use, by a person engaged in economic activities aimed at gaining profit.

This definition encompasses not only natural persons but also legal entities, provided that the goods are not intended for professional use (e.g., associations and foundations).

In cases where goods are intended for both professional and non-professional use, the determining factor should be the predominant use of the goods.

However, it is important to note that this is not the sole definition of consumer in Portuguese law. For instance, in Decree-Law no. 57/2008, dated March 26, concerning unfair business-to-consumer commercial practices, and in Decree-Law no. 24/2014, dated February 14, applicable to distance and off-premises contracts, this definition only includes natural persons, thereby excluding legal entities.

1.3 Who is/which entities are required to comply with consumer protection law?

In general, any individual or entity engaging in economic activities for profit and supplying goods, services, or transferring rights for non-professional use to natural persons (or, in certain cases, to legal persons, provided the goods are not intended for professional use – e.g., associations and foundations) are required to comply with the Consumer Protection Law (as well as with the legislation mentioned in response to question 1.1).

The particular obligations imposed on these individuals or entities vary significantly based on the sector of activity in which they operate, and the type of goods or services offered.

1.4 Which agency/agencies is/are responsible for enforcing consumer protection law (i.e., who is the investigator and who is the adjudicator)?

In Portugal, the primary agencies tasked with enforcing consumer protection laws are the DGC, the Food and Economic Safety Authority (“**ASAE**”), and the Public Prosecutor’s Office.

Furthermore, it should be mentioned that consumer associations – defined in the Consumer Protection Law as non-profit entities with legal personality, dedicated to safeguarding the rights and interests of consumers – also play a pivotal role.

1.5 Are there any specific bodies that regulate/enforce consumer protection law in specific sectors?

Yes. In addition to aforementioned agencies, there are specialised bodies responsible for regulating and enforcing consumer protection laws within specific sectors. These include, for instance, the National Authority for Communications (“**ANACOM**”), the Energy Services Regulatory Authority (“**ERSE**”), the Competition Authority (“**AdC**”), the National Authority for Medicines and Health Products (“**Infarmed**”), the Institute of Civil Construction and Real Estate (“**IMPIC**”), the National Civil Aviation Authority (“**ANAC**”), the Mobility and Transport Authority (“**AMT**”), the Insurance and Pension Funds Supervisory Authority (“**ASF**”), the Bank of Portugal (“**BdP**”) and the Portuguese Securities Market Commission (“**CMVM**”). Each of these entities operate within its designated domain to ensure compliance with consumer protection regulations.

2 Protections in Relation to the Quality and Function of Goods and Services

2.1 Please describe any protections regarding the quality and function of goods and services acquired by consumers.

According to the Consumer Protection Law, consumer goods and services must fulfil their intended purpose and produce the effects attributed to them, in accordance with legally established standards or, in the absence of these, in a manner appropriate to the legitimate expectations of the consumer.

Similarly, the Consumer Rights Decree-Law stipulates that professionals must deliver goods to consumers in accordance with the (subjective, objective and additional) criteria that will be discussed in the following answer.

In the case of movable goods, professionals are liable for any lack of conformity that manifests within three years of the date of delivery of the goods, except for goods with digital elements, which

may follow a specific regime. In the case of used movable goods, this period can be reduced to 18 months by agreement between the parties, unless the goods are advertised as reconditioned (this must be mentioned on the invoice), in which case the three-year period applies. Lack of conformity within two years of delivery is presumed to have existed on the date of delivery, unless it is incompatible with the nature of the goods or the characteristics of the lack of conformity. In the case of used movable goods in which the parties have reduced the guarantee period by agreement, this presumption applies only if lack of conformity manifests within one year of delivery. Under Decree-Law no. 24/2014, of 14 February, applicable to distance and off-premises contracts, consumers must be informed of these guarantees, including their duration, before entering such contracts.

Regarding immovable property, professionals are liable for any lack of conformity manifesting within: (i) 10 years for structural construction elements; and (ii) five years for other lack of conformity. Lack of conformity within these periods is presumed to have existed on the date of delivery of the property, unless incompatible with the nature of the property or the characteristics of the lack of conformity.

In the event of a lack of conformity of goods or services, consumers may have the right, depending on the circumstances of the case, to restore conformity by repair or replacement, proportionate price reduction, or contract termination. These rights will be analysed in further detail in the response to question 2.5.

2.2 Please outline the substantive tests for these protections.

According to the Consumer Rights Decree-Law, the conformity/non-conformity of goods is assessed based on several criteria:

- subjective criteria, such as: (i) correspondence to the description, type, quantity and quality and possession of the functionality, compatibility, interoperability and other characteristics provided for in the purchase contract; (ii) suitability for any specific purpose intended by the consumer, in accordance with what was previously agreed between the parties; (iii) delivery of all accessories and instructions, including installation, as outlined in the purchase contract; and (iv) provision of all updates specified in the purchase contract;
- objective criteria, such as: (i) suitability for the intended use of goods of the same type; (ii) correspondence to the description and possession of the qualities consistent with any sample or model presented by the professional to the consumer prior to the conclusion of the contract, where applicable; (iii) delivery of expected accessories, including packaging, installation instructions or other instructions that the consumer can reasonably expect to receive, where applicable; and (iv) correspondence to the expected quantity and possession of qualities and characteristics, including durability, functionality, compatibility, and safety, typical of goods of the same type, taking into account, in particular, their nature of the goods and any public statements made by or on behalf of the professional or others in the business chain, including producers, in particular, in advertising or labelling; and
- additional criteria, such as provision of updates, including security updates, necessary to ensure conformity. These updates must be communicated and provided within a period reasonably expected by the consumer.

These criteria may also be applicable, where relevant, for evaluating the conformity/non-conformity of the services provided.

2.3 What types of goods and services are covered by the protections relating to the quality of goods and services?

According to the Consumer Rights Decree-Law, all goods, whether movable or immovable, that are the subject of a purchase contract between consumers and professionals are covered by these protections. This includes contracts for the supply of goods to be manufactured or produced, as well as those supplied under a works contract or other provision of services, and leases of goods, with the necessary adaptations.

These protections extend to digital content or services incorporated into goods or interconnected with them, supplied with the goods under the terms of a purchase contract, regardless of whether the digital content or services are provided by the professional or a third party.

Furthermore, as discussed in responses to questions 2.1 and 2.2, consumer rights and associated criteria for these protections also apply to services provided under the general terms of civil law.

2.4 Are there any exceptions to these protections?

Yes. According to the Consumer Rights Decree-Law, these protections do not apply:

- to goods sold via attachment or any other form of judicial execution or conducted by a public authority; and
- the purchase and sale of animals.

It should also be noted that specific legislation regulates certain contracts, providing their own protections. Examples include contracts for electronic communications services, healthcare, online gambling and betting, and financial services.

2.5 What remedies are available for a breach of the protections in relation to the quality and function of goods and services?

If the protections concerning the quality and functionality of goods and services are breached, the consumer may have the following rights, contingent on the circumstances and the time elapsed since the date of communication of the lack of conformity:

- restoration of conformity through repair or replacement of goods or services;
- proportional reduction of the price; or
- termination of the contract.

In the case of movable goods: (i) the consumer can choose between repair or replacement, except when one option is impossible or, in comparison with the other means, would impose disproportionate costs on the professional; (ii) the professional may refuse to rectify the lack of conformity if repair or replacement is impossible or entails disproportionate costs, considering the circumstances; and (iii) the consumer may opt for a proportional price reduction or contract termination if the professional fails to repair or replace the goods, refuses to address the lack of conformity, or if the lack of conformity recurs or escalates in seriousness. These rights expire within two years of the date of reporting the lack of conformity, without prejudice to the grounds for suspension provided for by law.

In the case of immovable property: (i) the consumer may exercise any of these rights, except where it is impossible or constitutes an abuse of rights, under the general terms of civil law; (ii) these rights expire within three years from the date of reporting the lack of conformity, without prejudice to the grounds for suspension provided for by law.

2.6 Who has or which agencies have standing to initiate proceedings for a breach?

Typically, it is the affected consumer who initiates proceedings for breaches of this nature.

However, if the breach arises, for instance, in the general contractual clauses provided by the goods or services provider, any citizen enjoying civil and political rights, consumer associations, and/or the public prosecutor's office may commence proceedings (e.g., inhibitory or class actions) to challenge the validity of the clause(s) in question and declare them null and void.

2.7 Describe at least two examples of public or private enforcement of these protections in the last five years, including the conduct/alleged conduct, result and penalties imposed.

Two examples of enforcement of these protections in the last five years are as follows:

- Decision of the Faro District Court of 31 January 2022, in case no. 356/21.1T8ABF, where the court declared several clauses used by a company in its adhesion contracts null and void, including the following: “*The guarantee for all products sold [by the company] is established exclusively by the manufacturer (...). The duration of the guarantee may be altered unilaterally by the manufacturer and may also vary depending on the type of product and its use*”; and
- Decision of the Porto Court of Appeal of 08.03.2023, in case no. 369/22.6Y4PRT.P1, which upheld the ruling of the lower court. The company was ordered to pay a fine of EUR 1,250 in addition to administrative and procedural costs, for failing to inform consumers about the existence of guarantees, including their duration, in the context of distance and off-premises contracts.

3 Protections/Prohibitions in Relation to the Safety of Goods and Services

3.1 Please describe any protections regarding the safety of goods and services acquired by consumers.

Consumer rights, recognised as fundamental at both international and European Union (EU) levels, are also protected under the Portuguese Constitution (article 60), which includes the right to safety of goods and services.

Consumer right to safety is also enshrined in ordinary legislation, particularly in the Consumer Protection Law and Decree-Law no. 69/2005 of March 17, which transposes Directive 2001/95/EC, of the European Parliament and of the Council of 3 December 2001, on general product safety (the “**Product Safety Law**” or “**PSL**”).

Under the aforementioned legislation, the following protections apply concerning the safety of goods and services in Portugal:

- Consumers have the right to the protection of their health and physical safety. Thus, the supply of goods or the provision of services that involve risks incompatible with their use under normal or foreseeable conditions, including duration, and not acceptable according to a high level of protection of the health and physical safety, is prohibited (Arts. 3(b) and 5(1) CPL).
- Consumers have the right to be informed about the risks to health and safety resulting from the normal use of goods or services (Art. 8(3) CPL and 6(1)(a) PSL).

- Consumers have the right to injunction aimed at preventing, correcting, or putting an end to practices that jeopardise their health and physical safety (Art. 10(1)(a) CPL).

Additionally, specific product safety requirements exist for certain goods due to the unique risks they pose, leading to the application of particular regulatory framework. These include:

- Cosmetic products (Regulation (EC) no. 1223/2009 of the European Parliament and of the Council of November 30, 2009 – Cosmetic Products Regulation).
- The safety of toys (Decree-Law no. 43/2011 of March 24, 2011, transposing Directive 2009/48/EC of the European Parliament and of the Council of June 18, 2009).
- Pyrotechnic articles (Decree-Law no. 135/2015 of 28 July 2015, transposing Directive 2013/29/UE of the European Parliament and of the Council of July 12, 2013).

Furthermore, a product that fails to provide the safety that a person is entitled to expect is considered defective (Art. 4(1) of Decree-Law no. 383/89 of November 6, concerning liability for defective products).

There is also a general ban on the manufacture and marketing of products that, although not foodstuffs, possess a form, odour, colour, appearance, packaging, labelling, volume or size, likely to cause confusion with foodstuffs, especially among children. This could lead to dangerous ingestion, suffocation, poisoning, or the perforation or obstruction of the digestive tract (Arts. 1 and 2 of Decree-Law no. 150/90 of May 10, 1990, transposing Council Directive 87/357/EEC of June 25, 1987, on products that, appearing to be other than they are, endanger the health or safety of consumers.

3.2 Please outline the substantive tests for these protections.

As producers are obligated to ensure that only safe products are placed on the market, the conformity of a product to the general safety requirement is evaluated by considering the legal or regulatory standards defining the health and safety protection requirements necessary for the product to be marketed (Art. 4(1) (2) PSL).

In the absence of the aforementioned legal and regulatory standards, the following factors should also be considered (Art. 4(3) PSL):

- Portuguese standards transposing EU standards;
- the standards established in the EU Member State where the product is marketed (i.e., supplied or made available);
- recommendations from the European Commission (EC) providing guidelines on product safety assessment;
- product safety codes of good practice applicable in the relevant sector;
- the current state of knowledge and technology; and
- the level of safety reasonably expected by consumers.

For example, the law outlines various legal and regulatory standards concerning the safety of cosmetics and toys (e.g., including restrictions on the use of certain substances).

3.3 What types of goods and services are covered by the protections relating to the safety of goods and services?

Protections regarding the safety of goods and services apply to all goods and services introduced into the Portuguese market (Art. 2 PSL).

A “good” means any goods, whether new, second-handed, refurbished, or utilised in the context of providing a service,

designed for consumers or potentially utilised by consumers under reasonably foreseeable circumstances, even if not originally intended for them. Goods are supplied or made accessible as part of a business operation, whether for payment or free of charge, with the exception of immovable property (Art. 3(a) PSL).

3.4 Are there any exceptions to these protections?

According to the applicable law, second-hand products are exempt from safety requirements if they are supplied as antiques or as items requiring repair or reconditioning before use, provided that the supplier clearly informs the recipient of the product to that effect (Art. 2(3) PSL).

3.5 What remedies are available for a breach of the protections in relation to the safety of goods and services?

Consumers have the right to seek injunctions aimed at preventing, correcting, or terminating practices that endanger their health and physical safety (Art. 10(1)(a) CPL).

Additionally, consumers are entitled to compensation for property damage and personal injury resulting from the provision of defective goods or services (Art. 12(1) CPL).

3.6 Are there mandatory reporting requirements with respect to the safety of goods or services?

Where producers and/or distributors, as professionals, are aware or should be aware based on the information available to them that a product they have placed on the market poses risks to consumers that are inconsistent with the general safety requirement, they are required to promptly notify the competent authority in Portugal (Arts. 6(1)(c), 7(1)(b), and 8(1) PSL).

3.7 Describe any voluntary or mandatory product safety recall regimes.

Producers and/or distributors are obligated to take appropriate action to withdraw from the market products that may endanger consumer safety. This includes adequately and effectively informing consumers or recalling such products from them (Article 6(1)(b) and 7(1)(d) PSL).

Furthermore, the competent authority is also entitled to order or, if necessary, coordinate with producers and/or distributors the recall and safe destruction of any hazardous products or products presenting a serious risk to consumers (Art. 13(2)(c)(i) and 21(1)(c) PSL).

However, a product recall is only implemented as a last resort when other measures taken by producers and/or distributors fail to adequately mitigate the risks to consumer safety (Art. 13(3) PSL).

3.8 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

Example 1:

Breach/alleged breach: In July 2023, the Portuguese General Consumer Directorate identified a USB charger through the EU rapid alert system for dangerous non-food products (SafetyGate).

The charger lacked sufficient electrical insulation and creepage distance between the primary and accessible secondary circuits, posing a risk of electric shock. Consequently, the product did not comply with the requirements outlined in the Low Voltage Directive (Directive 2014/35/EU of the European Parliament and of the Council of 26 February 2014) or with the applicable European standard EN 62368-1.

Result: The USB charger was recalled from the market.

Penalties imposed: As of the drafting of this chapter, no other penalties have been publicly disclosed.

Example 2:

Breach/alleged breach: In December 2023, the Portuguese Authority for Economic and Food Safety seized 220 toys from the market due to non-compliance with safety requirements.

Result: Following the seizure of the 220 toys, ASAE initiated legal proceedings.

Penalties imposed: At the time of writing this chapter (March 2024), no penalties have been publicly disclosed.

4 Prohibitions Relating to “Conduct” Against Consumers

4.1 Please describe any protections/prohibitions relating to the conduct of persons or businesses (e.g., manufacturers/retailers) which sell or supply goods and services to consumers (“Conduct”). For example, misleading and deceptive Conduct, unconscionable Conduct, etc.

According to the Consumer Protection Law, consumers are entitled to receive goods and services of satisfactory quality. These goods and services should be capable of fulfilling their intended purpose and achieving the expected outcomes, either as per established legal standards or, in the absence of such standards, in a manner consistent with the reasonable expectations of consumers.

The Decree-Law on Individual Practices Restricting Trade prohibits several practices deemed as hindering fair trade. These include: i) applying discriminatory prices or sales conditions; ii) lack of transparency in pricing policies and sales conditions; iii) selling at a loss; iv) refusal to sell goods or services; and v) engaging in abusive commercial practices.

The Decree-Law on the Prohibition of Unfair Commercial Practices, in turn, primarily regulates commercial interactions between companies and consumers. It distinguishes between unfair commercial practices in general and specific unfair commercial practices.

As indicated by its title, the *Unfair Commercial Practices Act* addresses unfair commercial practices. Such practices are defined as those that: i) contravene the requirements of professional diligence; and ii) are likely to significantly alter the purchasing behaviour of the average consumer.

This Decree-Law specifies that any commercial practice failing to meet the standards of professional diligence, significantly altering or likely to significantly alter the economic behaviour of the targeted consumer or impacting that consumer’s decisions regarding a particular product or service, is considered unfair.

Furthermore, the Decree-Law on Individual Restrictive Trade Practices prohibits certain behaviours contrary to good faith and fair dealing among companies. Such behaviours may undermine transparency and the balance of negotiation positions between economic operators.

4.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

The Decree-Law on Individual Restrictive Trade Practices prohibits certain behaviours contrary to good faith and fair dealing among businesses, likely to adversely impact transparency and the balance of negotiating positions between economic operators. These prohibited behaviours include:

- i) one company practices pricing, sales conditions, or payment terms towards another company that require the provision of a benefit disproportionate to the transaction or the value of services rendered;
- ii) imposing unilateral conditions in commercial relationships by one company onto another; and
- iii) selling goods to consumers or other companies at a price lower than the purchase price, excluding discounts and payments received.

According to the Decree Law that approves the Advertising Code (Decree-Law no. 330/90, of October 23), advertising is bound by fundamental practices such as lawfulness, identifiability, truthfulness, and respect for consumer rights. Any advertising found to be misleading is prohibited, in accordance with the Decree-Law on unfair business practices concerning consumers.

A practice is misleading if it contains false or untrue information or if the information, though factually accurate, is likely to mislead the average consumer into making a purchasing decision that they would not have otherwise. Misleading practices also include omissions or unclear presentations that prevent consumers from making informed purchasing decisions.

Furthermore, aggressive and unfair practices involve harassment, coercion, or undue influence that significantly impairs the average consumer’s freedom of choice, leading them to make a decision they would not have otherwise. Several factors are considered to determine if a commercial practice is aggressive, such as:

- the nature, location and duration of the practice;
- the use of physical or verbal threats;
- the exploitation by the trader of circumstance (e.g. death or serious illness) to influence consumer decisions; and
- any disproportionate non-contractual conditions imposed on consumers wishing to exercise their contractual rights (including withdrawal from a contract).

Moreover, Annex I of Directive 2005/29/EC includes a “blacklist” of practices prohibited under all circumstances. This list includes practices like presenting false consumer reviews, concealing advertising in search results, and reselling tickets purchased by professionals through automated means (known as “digital robots”).

4.3 What types of goods and services are covered by these protections/prohibitions? Is the payment of a price for these goods/services always required for their enforceability?

According to the Unfair Commercial Practices Act, a commercial practice encompasses any action, omission, conduct, or statement by a professional, including advertising and commercial promotion, directly related to the promotion, sale, or provision of a product or service to consumers. Its scope of application is quite broad, covering all types of goods and services, including real estate, digital services, digital content, as well as associated rights and obligations.

The Decree-Law on individual commercial practices restricting trade applies to practices concerning goods/services

occurring within national territory. However, it excludes: i) services of general economic interest; and ii) the purchase and sale of goods and the provision of services, insofar as they are subject to sectoral regulation.

Considering that these protections/prohibitions apply regardless of the conclusion of any contract with consumers, the payment of a price for a good/service is not required for their enforceability.

4.4 Are there any exceptions/exemptions to the protections/prohibitions relating to Conduct?

In Portugal, the Consumer Code outlines exceptions to the prohibition of unfair practices. These exceptions are designed to justify certain commercial practices that might otherwise be deemed unfair under normal circumstances. Some key exceptions include:

1. **Business practices permitted by law or regulation:** Certain business practices may be expressly permitted or authorised by specific laws or regulations.
2. **Business practices covered by professional codes of conduct:** If a business practice adheres to a recognised professional code of conduct or is a commonly accepted practice within a particular sector, it may be considered not unfair.
3. **Commercial practices aimed at safeguarding the legitimate interests of the supplier:** In certain circumstances, commercial practices aimed at safeguarding the legitimate interests of the supplier may be deemed justified, provided they do not significantly harm the economic interests of consumers.
4. **Commercial practices aimed at promoting healthy competition:** Some commercial practices, which might otherwise be considered unfair, could be justified if they aim to foster healthy competition in the market and do not detrimentally impact consumers' interests.
5. **Commercial practices aimed at protecting the safety and health of consumers:** In exceptional cases, commercial practices aimed at safeguarding the safety and health of consumers may be considered justified, even if they could be interpreted as unfair, as long as they are proportional and necessary to achieve their intended objectives.

4.5 Are there any specific rules which apply in relation to online marketplaces?

The aforementioned protections/prohibitions extend to online marketplaces.

However, due to the nature of contracts formed in this environment, Decree-Law no. 24/2014, of February 14, applicable to them, imposes heightened pre-contractual information obligations, aimed at ensuring transparency in commercial practices and safeguard the legitimate interests of consumers.

Additionally, this Decree-Law grants consumers the right to terminate such contracts (with few exceptions) within 14 days (calculated from either the date of contract conclusion, in the case of service provision, or from the date of goods possession, in the case of product purchases). Importantly, consumers are not obligated to provide a reason for termination within this timeframe.

4.6 What remedies are available for a breach of the protections/prohibitions relating to Conduct?

Consumers have access to remedies available under general civil law.

The Decree-Law on the legal regime of general contractual clauses aims to delineate the principle of contractual freedom to ensure that contract law does not supersede legal regulations that must be adhered to within contracts. Consequently, this legislation prohibits certain practices, such as usurious business, leonine pacts, commission pacts, and any actions contrary to the law, public order, or good customs.

Furthermore, the Decree-Law on Distance Contracts, the Decree-Law on Individual Practices Restricting Trade and the Unfair Commercial Practices Act outline specific sanctions, including administrative offenses, fines, and supplementary penalties.

4.7 List at least two examples of public or private enforcement of the protections relating to Conduct in the last five years, including the breach/alleged breach, result and penalties imposed.

In the context of the distance contracting regime governed by Law no. 84/2021 of October 18, the Portuguese Court of Appeal found the defendant guilty of misleading omission. The Court determined that this behaviour could lead an average consumer, in the position of the plaintiffs, to believe that the contract was concluded with them. In view of this, the Court ordered the defendant to: i) pay administrative penalties; ii) amend and reduce the contract; and iii) provide compensation for the positive contractual interest.

In another instance, the Consumer Arbitration Court, in its decision of December 9, 2021, deliberated on a guarantee contract associated with a purchase and sale transaction. The guarantee aimed to cover "structural damage" to the contracted object. The Arbitral Tribunal concluded that the damage fell within the definition of "structural damage" outlined in the guarantee contract. Therefore, the Court ordered the repair of the damage at the expense of the Respondent.

5 Other Protections/Prohibitions

5.1 Does consumer law in your jurisdiction have any other prohibitions/protections not covered by the questions above? If so, please describe these prohibitions/protections.

Besides the aforementioned regimes, it is worth highlighting Decree-Law no. 70/2007, which governs commercial practices involving price reductions in retail sales conducted in commercial establishments. These practices aim to clear stocks, boost sales volume, or promote the launch of products that were not previously available in the market by the economic agent.

5.2 Please outline the substantive tests for the above-mentioned protections/prohibitions.

The main concerns addressed by Decree-Law no. 70/2007 are as follows:

- (a) providing detailed information regarding sales with price reductions (i.e. manner of sale, types of products involved, lowest price previously practised, and the duration of the sales period);
- (b) imposing limitations on how prices are displayed in retail establishments;
- (c) regulating the sale of defective products, which must be clearly indicated to consumers; and
- (d) regulating the sale of products during liquidation, which is permissible under specific circumstances such as

compliance with a court order, cessation of commercial activity, branch changes, transfer or cessation of commercial exploitation, unfeasibility of commercial practice due to construction works, or incurred damage.

5.3 Are there any exceptions/exemptions?

No exceptions provided for in Decree-Law no. 70/2007.

5.4 What remedies are available for a breach of these protections?

There are no specific remedies regulated in Decree-Law no. 70/2007. Consumers can resort to the remedies provided for under general civil law.

5.5 List at least two examples of public or private enforcement of these protections in the last five years, including the breach/alleged breach, result and penalties imposed.

In 2021, the Lisbon Court of Appeal issued a partial acquittal and upheld an appeal in a case involving an administrative offence under Article 10(5) of Decree-Law no. 70/2007. The defendant was acquitted of failing to provide ASAE (Portuguese Food and Economic Safety Authority) with the required five business days' notice for sales on sale. However, the court confirmed the decision to impose a fine of €500 on the defendant for failing to comply with the mandatory disclosure of information as stipulated in Article 4(1) of Decree-Law no. 70/2007.

6 Investigation of Potential Breaches

6.1 What powers does/do the consumer authority/authorities in your jurisdiction have to investigate potential breaches of consumer law? Describe the key steps in a typical investigation.

In Portugal, consumer authorities have broad powers to investigate potential consumer law offences. These powers include carrying out inspections of the targeted entity's premises, land and means of transport, as well as requesting documents, objects, information and clarifications.

In a typical investigation, the competent authority starts by using these powers to gather information about the possible offence and may also, depending on the circumstances of the case, order precautionary measures, such as the total or partial suspension of activities, the closure of premises and the seizure of goods and documents. In the case of activities carried out over the internet, the administrative authority may also order the removal of content, the imposition of warnings for consumers when they access the website in question and, as a last resort, the temporary blocking of the website.

Regardless of the investigation strategy adopted, the competent authority cannot impose a fine or ancillary sanction on the targeted entity without giving it the opportunity, within a reasonable period of time, to state its position on the offence imputed to it and the sanction or sanctions it incurs.

6.2 How is an investigation triggered (e.g., *ex officio*, whistleblower or complaint)?

An investigation can be triggered:

- In the context of an ordinary inspection by the competent authority, when there are circumstances that may indicate an offence (*ex officio*).
- Following a complaint, which may or may not have originated from an internal complaints channel of the targeted entity (whistleblowing).

6.3 Describe any complaints procedure for (i) consumers, and (ii) businesses.

Both consumers and businesses have the right to file complaints with the competent authorities if they become aware of or witness an infringement or potential infringement of consumer protection laws.

These complaints:

- can be anonymous or with identifying information;
- can be lodged in person, by mail (letter) or electronically (via e-mail or through the website of the authority in question, which usually has its own form for this purpose); and
- should contain as much information as possible (with a precise indication of the entity(ies) and the facts reported), in order to trigger an investigation.

6.4 What is the timeline for a typical investigation?

There is no specific timeline for a typical investigation.

Such a timeline will always depend, among other factors, on the number of entities involved, the complexity of the facts in question, the steps required to obtain evidence and the resources (human, technical, material and financial) of the competent authority.

6.5 Are there criminal penalties for non-compliance with a consumer law investigation? If so, provide examples where such penalties have been imposed.

Yes. In certain circumstances, the non-compliance with a consumer law investigation may constitute a criminal offence of disobedience, provided for and punishable under criminal law.

However, considering the broad investigative powers of the competent authorities referred to in the answer to question 6.1, no examples were found where such a penalty has been imposed.

6.6 Can investigations be resolved by way of commitments or undertakings?

Yes. In the case of less serious offences and the absence of previous offences in recent years on the part of the targeted entity, the competent authority may just issue a mere warning or admonition, provided that the entity commits/undertakes to comply with the rule and/or to remedy the situation in question.

7 Enforcement

7.1 How does/do the consumer authority/authorities seek to enforce consumer law (e.g., by administrative decision or by commencing proceedings in court)?

There are several authorities in Portugal that have a direct or indirect role in consumer law enforcement, depending on the industry/economic area in which they operate or that they supervise. In general, such authorities enforce the compliance with consumer law in the context of criminal or administrative offence proceedings.

Criminal or administrative offence proceedings may be initiated following the filing of a complaint by the affected party or as a consequence of inspections carried out by the competent authorities.

Except for criminal offences, the authorities are empowered to apply sanctions, i.e. without the intervention of a court, and there is only judicial review if the penalised party decides to appeal.

In this context, reference should also be made to consumer injunctions, which can be filed by, among other subjects/entities, the Public Prosecutor's Office, with a view to preventing, correcting and/or ending the use of contractual clauses and/or illegal practices that harm consumers' rights.

7.2 Is/are the consumer protection authority/ authorities bound by a time limit to commence proceedings on breaches?

All consumer authorities' proceedings are bound by a limitation period, that vary substantially depending on the industry/economic sector, the type of conduct, and the authority responsible for the proceeding. For instance, regarding the banking industry, Portuguese Central Bank may apply penalties for specific breaches of consumer protection law within a limitation period of five years (Article 209 of General Regime for Credit Institutions and Financial Companies). On economic sectors not subject to specific supervision authorities, ASAE (Authority for the Food and Economic Safety) may apply penalties with a limitation period varying between three and five years (Article 27 of Decree-Law no. 433/82, of 27 October).

7.3 Describe the enforcement powers/tools available to these bodies (civil, administrative, criminal).

The authorities may impose administrative sanctions for violations of consumer law. Such sanctions include fines (economic penalties), as well as ancillary sanctions, such as, but not limited to, the closing of establishments, the suspension of granted permits or licences or loss of assets.

Depending on the nature and significance of the violations, these administrative procedures may lead to criminal prosecutions. However, the administrative authorities are not empowered to impose any criminal sanctions themselves, having only the power to investigate such actions and report to the Portuguese Prosecutor Entity.

Where an offence is punishable by a criminal fine or imprisonment, the criminal courts have jurisdiction.

7.4 Where regulators/enforcement bodies have a choice of enforcement tools/powers, what considerations do they take into account in determining which tools/powers to use?

The maximum amount of the imposable penalties is defined by law. However, the competent authorities have significant discretionary powers regarding the relevant conduct severity's assessment and regarding the determination of the respective penalty. In any case, the principle of proportionality of the sanctions must be complied with.

Authorities' considerations on the penalty determination include the nature, severity, extent and duration of the violation, previous infringements committed, or measures taken to mitigate or remedy the damages suffered by consumers.

7.5 Describe the relevant rules and procedures that must be followed by such bodies (e.g., administrative, judicial).

In the criminal and administrative offence proceedings – which are initiated after the filing of a complaint by the affected party or because of an inspection carried out by the authorities – during the investigation phase, the defendants may be notified to present their statements and offer evidence they deem as relevant for the investigation. Nevertheless, after the investigation phase is concluded, the defendants are notified of the indictment and to present their statement of defence.

In criminal proceedings, the presentation of the statement of defence is followed by the trial phase – which may result in an acquittal or a conviction.

In administrative offence proceedings, the submission of the statement of defence is followed by the inquiry phase (similar to the trial phase in the criminal proceedings). The final decision (acquittal or conviction) is then rendered by the competent administrative authority.

Decisions taken by administrative authorities can be appealed to the courts (namely to a specialised court on such subjects, referred to on question 8.1). The final decisions rendered may include, in addition to the fine, corrective measures and ancillary sanctions.

7.6 Is there a right to a stand-alone action and follow-on right of action within consumer law? Who has standing to bring these actions?

Consumers affected by breaches of consumer law, in addition to the right to lodge complaints with the competent authorities, have the right to file individual legal actions with a view to exercising their rights and/or claiming compensation for the damage suffered.

These actions can be judicial and, in certain circumstances, arbitral, with disputes of up to EUR 5,000 being subject to necessary arbitration when, at the express option of consumers, they are submitted to an arbitral court belonging to the legally authorised consumer conflict arbitration centres. In this context, reference should also be made to “*juílgados de paz*” – an alternative means of settling disputes up to EUR 15,000, which is of great importance in this area.

Finally, when the breach affects a diffuse/collective interest, any citizen enjoying their civil and political rights, as well as associations and foundations defending those rights, can file class actions on behalf of the group of consumers affected (special procedural representation regime, based on an opt-out system), regardless of whether or not they belong to that group. In these actions, in addition to correcting and/or ending the breaches in question, these subjects/entities can also claim compensation for the group represented.

7.7 Is there a statute of limitations for bringing stand-alone or follow-on actions?

Yes. For instance, with regard to compensation for infringements of competition law, and without prejudice to the limitation period provided for in Article 309 of the Civil Code (20 years), the right to compensation is time-barred within five years from the date on which the injured party became aware, or could reasonably be supposed to have become aware, of the following: (i) the conduct in question and of the fact that it constitutes

an infringement of competition law; (ii) the identity of the infringer; and (iii) the fact that the infringement of competition law has caused him damage, even if he does not know the full extent of the damage.

The statute of limitations for crimes and administrative offences related to consumer law vary in accordance with the applicable penalty, but usually not exceed five years. Please note that this deadline may be extended up to seven and-a-half years, in the event of verification of the causes of suspension or interruption of the statute of limitations foreseen in the applicable legislation.

7.8 Describe any international or regional cooperative mechanisms (e.g., MOUs) in which your jurisdiction is involved in the enforcement of consumer protection.

Portugal is part of the European Consumer Protection Cooperation Network (“CPC”). The CPC was established in 2004 and is currently governed by Regulation (EU) N° 2017/2394. This network promotes cooperation between national authorities in charge of consumer protection, making available powers and procedures to tackle cross-border infringements of consumer legislation and to coordinate market surveillance and enforcement activities. The cooperation is applicable to consumer rules covering various areas such as unfair commercial practices, e-commerce, geo-blocking, package holidays, online selling, and passenger rights.

Portugal is also member of the International Consumer Protection and Enforcement Network (“ICPEN”), a membership organisation consisting of consumer protection law enforcement authorities from across the globe.

8 Appeals

8.1 Describe any appeal processes.

Administrative decisions rendered in the context of administrative offences procedures and judicial decisions rendered in the context of a criminal procedure can be appealed through judicial channels. Depending on the applicable regime (which varies depending on the sector), the deadlines for filing appeals may vary from 10 to 30 days.

For example, the Competition, Regulation and Supervision Tribunal is responsible for hearing matters relating to the appeal, review and enforcement of decisions, orders and other measures in administrative offence proceedings that are subject to legal challenge:

- (a) The Competition Authority (“PCA”).
- (b) The Mobility and Transport Authority (“AMT”).
- (c) The National Agency for Civil Aviation (“ANAC”).
- (d) The National Communications Authority (“ANACOM”).
- (e) The Insurance and Pension Funds Supervisory Authority (“ASF”).
- (f) The Bank of Portugal (“BP”).
- (g) The Portuguese Securities Market Commission (“CMVM”).
- (h) The Media Regulatory Authority (“ERC”).
- (i) The Health Regulatory Authority (“ERS”).
- (j) The Water and Waste Services Regulatory Authority (“ERSAR”).
- (k) The Energy Services Regulatory Authority (“ERSE”).

8.2 Can consumers or retailers/manufacturers appeal decisions made by the consumer authority/authorities or by a court?

Decisions rendered by administrative authorities (in the context of administrative offence proceedings) or by the court (in the context of criminal proceedings) can be appealed to the extent such decisions are rendered against the appealing party (which may be the consumer or the retailer/manufacturer).

Safe for decisions rendered in criminal proceedings (which are always appealable), the appeal of decisions rendered by courts in proceedings of other nature (i.e., civil litigation proceedings) depends on the value and the issue at stake.

If the laws applied by the administrative authorities or by any court are deemed to be in violation of the Portuguese Constitution, there may be a possibility to appeal to the Constitutional Court. This is only possible if the violation of the Constitution is argued during the proceedings.

8.3 Does an appeal suspend the effect of any penalty/ the requirement to pay any fine (if applicable)?

Typically, the appeal of a decision rendered in administrative offence proceedings or in criminal proceedings suspends the effect of the penalty. This means that the applicable fines and sanctions only produce their effects after a decision is rendered by the court of appeal.

9 Current Trends and Anticipated Reforms

9.1 What are the recent enforcement trends in your jurisdiction?

In recent years, there has been a strong trend towards enforcement based on the filing of class actions for breaches of consumer law, mainly by consumer associations.

These types of actions have been highly publicised, both because they are based on the rights of many consumers and because of the high amounts of compensation that are claimed in them, which result in major contingencies for the target entities.

In this context, reference should also be made to the recent Decree-Law no. 114-A/2023, of 5 December, which establishes the regime applicable to national and transnational class actions for the protection of consumers’ rights and interests, which transposes Directive (EU) 2020/1828, of the European Parliament and of the Council, of 25 November 2020, on representative actions for the protection of the collective interests of consumers, which standardised the legal framework applicable to these actions.

In addition to this trend, it is also important to highlight a greater enforcement of consumer laws by the competent authorities, in particular the DGC and ASAE, at times of the year when the consumption is greater (e.g. Christmas and “Black Friday”) and in the context of e-commerce.

9.2 Are there any proposed reforms to consumer law or policy within the next 12 months?

Consumer law reforms have been closely linked to legislation produced at European Union level. In this context, we would like to highlight the following pieces of legislation/proposals which, sooner or later, will certainly result in legislative reforms/changes in this area (from the oldest to the most recent):

- Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (artificial intelligence act), adopted by the Commission on 21 April 2021;
- Directive (EU) 2019/1023, of the European Parliament and of the Council, of 20 June 2019, on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt;
- Directive (EU) 2021/2167, of the European Parliament and of the Council, of 24 November 2021, on credit servicers and credit purchasers. This Directive is already in force and Member States should have already: (i) adopted and published, by 29 December 2023, the laws, regulations and administrative provisions necessary to comply with it; and (ii) applied the measures referred to in paragraph 1 of it from 30 December 2023. However, Portugal, among other Member States, has not done so to date; and
- Directive (EU) 2023/2225, of the European Parliament and of the Council, of 18 October 2023, on credit agreements for consumers. This Directive is already in force and Member States shall: (i) adopt and publish, by 20 November 2025, the laws, regulations and administrative provisions necessary to comply with it; and (ii) apply those measures from 20 November 2026.



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