

NEW PORTUGUESE RULES ON CONSUMER RIGHTS

The legal guarantee period for movable items is extended from two to three years and for immovable property (as to structural elements) from five to ten years. The rights of consumers of digital goods, content and services are expressly regulated, including the liability of online marketplace platforms.

As of 1 January 2022, new rules strengthening consumers' rights will enter into force, particularly regarding legal guarantee periods and the exercise of rights by consumers in case defective products.

Decree-Law 84/2021 of 18 October 2021 repeals Articles 9-B (Delivery of goods) and 9 -C (Transfer of risk) of the Consumer Protection Act, approved by Law 24/96 of July 31, and Decree-Law 67/2003, of 8 April, on guarantees for consumer goods.

To adapt the rules of conformity of goods to the digital dimension of the market, the definition of "consumer goods" is extended to apply to digital goods, content, or services, for example, the purchase of digital books (eBooks), subscription to periodical publications or subscription to a streaming service. In this context, Decree-Law 84/2021 provides specific rules on the legal guarantee periods and the liability of professionals who provide digital goods, content or services through online platforms (e.g., marketplaces) of third parties.

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Here is the list of the main changes introduced by Decree-Law 84/2021:

EXTENSION OF THE LEGAL GUARANTEE PERIOD FOR MOVABLE ITEMS

The legal guarantee period for movable items is extended from two to three years, counting from the date the good is delivered to the consumer. In the first two years, the consumer will not have to demonstrate that the defect existed at the time of delivery of the good, since the consumer is entitled to a legal presumption of the existence of the defect at that date.

The obligation upon the consumer to report the defective nature of the product within a certain period from the date of its knowledge (two months in the case of movable items) no longer applies. As a result, the consumer can exercise his/ her rights without any obstacles, during the entire legal guarantee period.

HIERARCHY BETWEEN THE RIGHTS TO (I) REPAIR OR REPLACEMENT OF THE GOOD, (II) PRICE REDUCTION AND (III) TERMINATION OF THE CONTRACT

In the event of a defect in a movable item, the consumer keeps the right (i) to have the product repaired or replaced, (ii) to a proportional reduction of the price or (iii) to terminate the contract. Unlike the previous scheme, which does not establish a hierarchy of rights, these rights are now subject to different levels of precedence.

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This means that in case of a defective product, the consumer must exercise the right of having the good repaired or replaced first. The repair or replacement of the good must be carried out, free of charge, by the professional within no more than 30 days.

In case of repair, the repaired good will benefit from an additional six-month guarantee for each repair, up to a limit of four repairs. The seller has to provide the parts needed to repair the product purchased by the consumer for a ten-year period.

If the defect appears in the first 30 days after the delivery of the movable item, the consumer can choose to request immediate replacement of the good or the termination of the contract, without the need for verification of any specific condition.

The exercise of the right of termination of the contract creates an obligation for the consumer to return the goods to the seller, at the seller's expense, and for the professional to reimburse the consumer for the price paid for the goods following receipt or proof of dispatch by the consumer. Unless otherwise is agreed between the parties, and provided that the consumer does not incur in any costs for the reimbursement, reimbursement must be made by the same means of payment as for the initial transaction and within 14 days.

LIABILITY ON MANUFACTURERS FOR DEFECTIVE PRODUCTS

The possibility for the consumer to exercise rights of repair and replacement of the good directly before the manufacturer is kept, as well as the professional's right of recourse against a person at earlier stages of the contractual chain.

EXTENSION OF THE LEGAL GUARANTEE PERIOD FOR IMMOVABLE PROPERTY

The legal guarantee period for immovable property for construction flaws in structural elements of the property is increased from five to ten years; for all other defects, the guarantee period is five years.

In the event of a defect in immovable property, the consumer retains the right to have the defect repaired or replaced; or to terminate the contract.

COMMERCIAL GUARANTEE (REPLACING THE VOLUNTARY GUARANTEE) AND INCREASED INFORMATION OBLIGATIONS

The voluntary guarantee (i.e., the undertaking or declaration, whether free of charge or not, given to the consumer by the seller, beyond the professional's legal obligations to guarantee conformity) is retained and renamed as the commercial guarantee.

The commercial guarantee must be provided to the consumer in writing (or in another durable medium) no later than the time of delivery of the goods, be drafted in Portuguese and include enhanced information obligations for the professional, including, in particular, a clear statement that the consumer is entitled to have the lack of conformity remedied, the price reduced or the contract terminated, and that those rights are not affected by the commercial guarantee.

DIGITAL GOODS, CONTENT AND SERVICES

The new legislation establishes specific rules regarding the supply of digital goods, content and services, providing the right to contract termination by the consumer in case of non-delivery. In turn, in case of non-compliance of the digital content and services, the consumer has the right to have the conformity restored, the price reduced, or the contract terminated.

The professional is under an obligation to demonstrate that the digital content or service provided was in conformity:

- (i) In contracts where a single act of supply or a series of individual acts of supply is agreed, during the period of one year from the date of supply;
- (ii) In contracts where continuous supply is agreed, for the period during which the digital content or services are to be supplied.

LIABILITY OF PROFESSIONALS WHO PROVIDE DIGITAL GOODS, CONTENT OR SERVICES THROUGH THIRD-PARTY ONLINE PLATFORMS

The new scheme provides for joint and several liability of professionals, who provide digital goods, content or services via online platforms (e.g. marketplaces), and their contractual partner towards the consumer. This means that in the event of non-delivery or non-compliance of digital goods, content or services, the consumer can exercise his/her rights against the professional who owns the online platform (referred to as the provider of the online marketplace) or the supplier of the digital good, content or service, when:

- (i) The contract is concluded exclusively through the means made available by the provider of the online marketplace;
- (ii) The payment is exclusively made through the means made available by the provider of the online marketplace;
- (iii) The terms of the contract concluded with the consumer are essentially determined by the provider of the online marketplace or the price to be paid by the consumer is likely to be influenced by the provider of the online marketplace; or
- (iv) The associated advertising is focused on the provider of the online marketplace and not on the professional providers of the digital good, content or service.

SANCTIONS

The violation of the rules established by Decree-Law 84/2021 constitutes a serious economic offence, and may lead to the application of fines in the following amounts:

- (i) Natural person, from €650 to €1,500;
- (ii) Micro company, from € 1,700 to € 3,000;
- (iii) Small company, from €4,000 to €8,000;
- (iv) Medium company, from €8,000 to €16,000; and
- (v) Large company, from €12,000 to €24,000.

Inspection, investigation of administrative offence proceedings and application of fines and additional penalties are the responsibility of the *Autoridade de Segurança Alimentar e Económica* (ASAE) and, limited to the rules applicable to immovable property, IMPIC, I. P..

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