



## OMNIBUS DIRECTIVE

### *STRENGTHENING CONSUMER'S RIGHTS ONLINE*

Decree-Law no. 109-G/2021, of 10 December partially transposed the Omnibus Directive (Directive 2019/2161, of the European Parliament and of the Council) strengthening the rights of online consumers, with a view to greater transparency of information.

On April 3, 2023, Law nr. 10/2023 of 3 March was published. This law completed the transposition of this Directive into Portuguese law.

The diploma, which came into force on April 2, changes several diplomas related

to consumer protection, so we list the main changes as follows:

#### **DECREE-LAW NR. 446/85**

#### **LEGAL REGIME OF GENERAL CONTRACTUAL CLAUSES**

The maximum limits of the amounts of the fines imposed on the administrative offences provided for in generalised infringements are amended.

The decision-maker may no longer take into account other aggravating or mitigating factors applicable to the circumstances of the case when determining the fine, but must now take

into account the penalties imposed on the offender for the same offence in other Member States, if the information is available under the mechanism established in Regulation 2017/2394.

## **DECREE LAW NR. 138/90**

### *ON THE MANDATORY DISPLAY OF THE SELLING PRICE TO THE CONSUMER ON GOODS INTENDED FOR RETAIL SALE*

The elements to be considered by the decision-maker when determining the fine for the practice of the administrative offences provided for in the decree-law are established.

## **DECREE-LAW NR. 7/2007**

### *ON COMMERCIAL PRACTICES WITH PRICE REDUCTIONS IN RETAIL SALES*

The elements to be considered by the decision maker when determining the fine for the practice of the administrative offences provided for in the Decree-Law are established.

## **DECREE-LAW NR. 57/2008**

### *ON THE UNFAIR COMMERCIAL PRACTICES REGIME*

The maximum limits of the amounts of the fines applied to the administrative offences provided for in generalised infringements will be amended.

## **DECREE-LAW NR. 24/2014**

- It is now stipulated that online marketplace providers providing access to assessments made by consumers must clearly and unequivocally identify assessments made in exchange for a

benefit, when they are or should be aware of this.

- Online marketplace providers are now obliged to provide mechanisms for reporting false or abusive assessments, allowing them to respond to the assessment presented.
- The supplier of goods or service provider is required to comply with the GDPR; to refrain from using content provided or created by the consumer when using digital content or services supplied by the supplier of goods or service provider, with exceptions; to make available free of charge and in reasonable time and in a commonly used and machine-readable data format, to the consumer, upon request, any content provided or created by the consumer when using digital content or services supplied by the supplier of goods or service provider.
- It is also provided that the supplier of goods or services may, after termination of the contract, prevent the consumer from using the digital content or services relating to the terminated contract.
- The range of administrative offences provided for in the diploma is reinforced.

Specifically, as regards the administrative offences, a maximum fine of 4% of the offender's annual turnover or, if it is not possible to ascertain this, the amount of € 2,000,000.00 (two million euros) is set.

It should also be noted that, in determining the fine applicable for the commission of administrative offences, factors such as the nature, gravity, size and duration of the offence will now be taken into account, as well as any infringements committed by the offender in question, the financial benefits obtained/ losses avoided by the offender, among others.

With the publication of Law no. 10/2023, of 3 March, which completed the transposition into Portuguese law of the Omnibus Directive, an important step is thus taken towards achieving the goal of ensuring better enforcement and modernisation of European Union rules on Consumer Protection, with a strengthening of consumers' online rights and transparency of information.

*Rodrigo Graça*  
*r.graca@caldeirapires.pt*