

LEGAL ALERT

LAW NO. 10/2023, OF MARCH 3, ON CONSUMER PROTECTION

I. Legal framework and main amendments

On April 2, 2023, the [Law no. 10/2023, of March 3](#), which concludes the transposition of [Directive \(EU\) 2019/2161](#), regarding consumer protection rules, will come into force, and will amend the following legislation:

- [Decree-Law no. 446/85, of October 25](#), that establishes the Legal Regime of General Contractual Clauses (“DL no. 446/85”);
- [Decree-Law no. 138/90, of April 26](#), that requires goods for retail sale to display their selling price to the consumer (“DL no. 138/90”);
- [Decree-Law no. 70/2007, of March 26](#), that regulates commercial practices with price reductions in retail sales practiced in commercial establishments, with the aim of disposing stocks, increasing the sales volume or promoting the launch of a product not previously commercialized by the economic agent (“DL no. 70/2007”);
- [Decree-Law no. 57/2008, of March 26](#), that establishes the regime of dishonest commercial practices of companies in relations with consumers, occurring before, during or after a commercial transaction regarding a good or service (“DL no. 57/2008”);
- [Decree-Law no. 24/2014, of February 14](#), concerning distance and off-premises contracts (“DL no. 24/2014”).

II. Maximum amount of fines at 4% of the trader's annual turnover in the Member State or Member States concerned in case of widespread infringements or widespread infringements with a Union dimension

In the field of administrative sanctions, the new law has transposed into domestic law what can be called a new category of offenses: **widespread infringements** or **widespread infringements with a Union dimension**, within the meaning of article 3 (3) and (4), of [Regulation \(UE\) 2017/2394 of the European Parliament and of the Council of 12 December 2017](#), on cooperation between national authorities responsible for the enforcement of consumer protection laws (“Regulation (EU) 2017/2394”).

Where the offences under each of the above legislation correspond to widespread or widespread infringements with a Union dimension, the maximum fine for such infringements is set at a level that is **4% of the trader's annual turnover in the Member State or Member States concerned or, if no information on annual turnover is available, EUR 2,000,000.00** (cf. article 34-A (2) and (3), of DL no. 446/85; article 21 (2) and (3), of DL no. 57/2008; article 31 (4) and (5), of DL no. 24/2014).

III. Criteria for the application of penalties

The new law also introduces, as a complement to [Decree-Law no. 9/2021, of January 29](#), which establishes the Legal Regime of Economic Offenses (“LREO”), common non-exhaustive and indicative criteria for the application of penalties, among which we highlight: **a)** nature, gravity, scale and duration of the infringement; **b)** any action taken by the trader to mitigate or remedy the damage suffered by consumers; **c)** any previous infringements by the trader; **d)** the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data are available; **e)** penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394.

IV. In particular, the amendments to DL no. 24/2014

Among the several amendments made by the law under analysis, we would highlight those that affect DL no. 24/2014 (republished by the new law), particularly, with regard to the **obligations of the supplier or service provider, in the event of the consumer exercising the right of withdrawal**. Considering this legal framework, the new law, notably:

- With reference to the processing and free movement of consumer personal data Requires, requires compliance with the rules of [Regulation \(EU\) 2016/679, of the European Parliament and of the Council of 27 April 2016](#) (“GDPR”);
- Requires the supplier or service provider to refrain from using contents provided or created by the consumer when using the digital content or services made available by the supplier, which does not qualify as personal data, unless such contents:
 - a) have no use outside the context of the digital content or services provided;
 - b) only concern the consumer’s activity when using the supplied contents or services;
 - c) are linked to other data by the supplier of goods or service provider and cannot be disaggregated or require disproportionate effort;
 - d) have been produced jointly by the consumer and third parties, and other consumers can continue to use these contents;
- Stipulates that, except as provided in subparagraphs a), b) e c) above, upon request, the supplier or service provider shall make available to the consumer – within a reasonable time, without undue delay and in a commonly used and machine-readable data format – any content provided or created by the consumer during the period in which he made use of the digital content or digital services supplied, provided that such content does not constitute personal data and as long as the consumer requests it;
- Allows the supplier or service provider, subject to compliance with the previous paragraph, to prevent the consumer from using that digital content or services, after the withdrawal, by making it inaccessible to the consumer or deactivating the consumer’s user account.

With regard to administrative offenses, DL no. 24/2014 now provides that the following violations by the provider of an online marketplace (*i.e.*, the entity managing the website trough which

distance contracts can be concluded) are to be considered serious economic offenses, punishable under the LREO:

- Failing to provide the consumer, in the case of contracts concluded on online markets, with the additional pre-contractual information provided for in the subparagraphs of article 4-A of DL no. 25/2014, before the consumer is bound by any contract or proposal;
- In cases where the provider of the online marketplace provides access to assessments made by consumers:
 - Fails to take due diligence measures, in particular those referred to in article 4-B (1), aimed to ensuring the reliability of such assessments;
 - Do not indicate the criteria used in the assessments that are made available, preferably in chronological order;
 - Do not provide mechanisms for reporting false or abusive assessments or mechanisms that allow the response to the assessment submitted by the supplier or service provider.

[Mariana Soares David \[+info\]](#)

[João Rodrigues Brito \[+info\]](#)

[Mariana Pedrosa da Fonseca \[+info\]](#)

This publication is purely informational and is not meant to be a source of legal advice, nor does it contain a comprehensive review of all aspects of the law and practice referred to. The information contained herein refers to the date of first publication, readers being warned to take legal advice before applying it to specific issues or transactions. The contents of this publication may not be copied, disclosed or distributed in whole or in part without prior consent. For more information please contact us at com.pr@mlgts.pt.