

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | LITIGATION

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Law nr. 144/2015, of 8 September

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LAW NR. 144/2015, OF SEPTEMBER 8

Law nr. 144/2015, published in the Official Gazette on September 8, 2015 ("Law nr. 144/2015"), transposes into the national legal system Directive 2013/11/EU, of the European Parliament and of the Council, of 21 May, 2013 ("Directive"), which sets the legal framework for the alternative dispute resolution for consumer disputes' mechanisms.

Pursuant to what is set in the Directive, it aims to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures, without prejudice to their right of access to the judicial system.

Scope of application

Law nr. 144/2015 shall apply to procedures for the out-of-court resolution of domestic and cross-border disputes promoted by an Alternative Dispute Resolution ("ADR") entity, whenever said disputes are initiated by a consumer against a supplier of goods or a provider of services, concerning contractual obligations stemming from sales contracts or service contracts between a trader established and a consumer resident in Portugal and the Union.

However, the aforementioned Law nr. 144/2015 shall not apply to: a) non-economic services of general interest (namely those provided by the State or on its behalf); b) health services provided by health professionals to patients to assess, maintain or restore their state of health; c) public providers of further or higher education; d) procedures initiated by a trader against a consumer; and e) procedures started by consumers before complaint-handling systems or those of a similar nature or before the competent sectional regulatory authorities, when the former are operated by the trader.

Entities and ADR procedures

Law nr. 144/2015 sets the obligations for the ADR entities, the requirements which must be met in what regards the knowledge and qualifications of its employees, as well as the principles of independence, impartiality and transparency.

Likewise, Law nr. 144/2015 further sets the main rules which must guide the ADR procedures, in addition to the grounds on which an ADR entity can refuse to handle a dispute.

Duties of information of the suppliers of goods and services providers

The suppliers of goods or services providers established in Portuguese territory shall inform the consumers regarding the available ADR entities or to which the former are bound by accession or by statutory requirement arising from mandatory arbitration, and shall also inform the website of the same.

This information shall be provided in a clear, comprehensible and easily accessible form (visible) in the website of the suppliers of goods or services providers, as well as on the sales agreements or services agreements entered into between the suppliers of goods or services providers and the consumer, whenever these are in writing or constitute adhesion agreements, or yet on another durable medium (namely purchase order, confirmation of order, repair order, invoice, receipt, physical support of the customer/client contact areas, as for example, a sign displayed on the wall or placed at the reception desk).

The deadline for adaptation to these rules is today, 23 March 2016.

Administrative offences

Any possible infringements by the suppliers of goods and services providers to the Duties of Information, as described above, are considered administrative infringements punishable with a fine ranging between € 500,00 and € 5.000,00, when committed by a natural person, and between € 5.000,00 and € 25.000,00, when committed by a legal entity.

Negligence and attempt are punishable, in which case the minimum and maximum levels of the applicable fines are reduced by half.

It is up to the Economic and Alimentary Security Authority (*Autoridade de Segurança Alimentar e Económica*), or in the regulated sectorial domains, to the competent supervisory authority of such sector, to conduct the supervision, instruction and render the decision of the respective administrative offence proceedings.

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