
Consumer Law: New Decree Law 84/2021 of October 18

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Decree Law 84/2021 transposes Directive (EU) 2019/771 and Directive (EU) 2019/770, consolidating consumer rights in the competitive and digital market, establishing rules on the conformity of goods, the remedies in the event of lack of conformity, the means for exercising those remedies, and commercial guarantees.



Summary of Decree Law 84/2021 of October 18

Decree Law 84/2021 transposes the following into Portuguese law:

- Directive (EU) 2019/771 of the European Parliament and of the Council of May 20, 2019, on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC and repealing Directive 1999/44/EC, consolidating consumer rights in the sale of consumer goods
- Directive (EU) 2019/770 of the European Parliament and of the Council of May 20, 2019, on certain aspects concerning contracts for the supply of digital content and digital services, establishing the consumer protection regime for contracts for the supply of digital content and services

Decree Law 84/2021 also establishes:

- the regime applicable to the purchase and sale of real estate in case of lack of conformity;
- the direct liability of the producer in case of lack of conformity of the goods, contents or digital services;
- the liability of online marketplace providers; and
- the sanctioning regime applicable to the breach of professional duties.

Decree Law 84/2021 applies to:

- sale and purchase contracts between consumers and sellers, including those entered into for the supply of goods to be manufactured or produced;
- goods supplied under a works contract or other service contract, as well as the leasing of goods, with the necessary adaptations;
- digital content or services, individually considered; and
- digital content or services that are incorporated in or intertwined with goods and are supplied with the goods under a contract of sale, regardless of whether the seller or a third party supplies the digital content or services.



Under article 54 of Decree Law 84/2021, its entry into force repeals:

- articles 9B (“delivery of goods”) and 9C (“transfer of risk”) of Law 24/96 of July 31 (Consumer Protection Law); and
- the current law applicable to the sale of consumer goods and the respective guarantees, approved by Decree Law 67/2003 of April 8.

Main changes

Goods

- The **concept of “consumer goods”** has been broadened to meet the need to include new technologies, namely goods incorporated in or interconnected with a digital content or service, as well as reconditioned goods.
- **A hierarchy has been established for the three consumer rights** (the repair or replacement of the good, the reduction of the price, and the termination of the contract), as well as certain requirements and criteria for exercising each one of them, which is a novelty compared to the previous regime.
- There is no longer a deadline for the consumer to **report the lack of conformity of the good** from the moment he or she becomes aware of it.
- The seller's **liability period** has been extended to three years, and in the first two years of that period, there is a presumption that the lack of conformity of the good was already existent at the date it was delivered.
- **New obligations and deadlines have been imposed on the seller**, namely regarding the repair and replacement of goods, the additional guarantee attributed to repaired goods, and the return of the amount the consumer paid if the consumer decides to terminate the contract.
- A new right applicable to the seller is established, **allowing the seller to act against** a person acting at earlier stages of the contractual chain if that person is responsible for the lack of conformity of the good.
- A new post-sale and spare parts regime applicable to the producer is established, obliging the producer to provide the parts necessary to repair the goods that the consumer purchases for a 10-year period after the last unit of the respective good has been placed on the market.



- New measures have been created to protect consumers who acquire **movable goods subject to registration**, namely a duty to guarantee after-sales assistance.
- Regarding **immovable property**, consumers' rights have been consolidated by extending the period regarding structural construction elements' noncompliance to 10 years.
- A new concept of "**commercial guarantee**" has been introduced to replace the previous voluntary guarantee and impose more stringent information duties.

Decree Law 84/2021 introduces a new regime for digital content and services, which had not been regulated to date. This new regime establishes objective and subjective requirements for verifying the conformity of the that digital content and services. In particular, it highlights the following:

- The right for the consumer to terminate the contract if **the good is not delivered** according to certain rules, as well as when certain subjective and objective requirements are not met.
- If the **case of lack of conformity of the digital content and services**, the consumer is entitled to i) request that this conformity is reestablished, ii) have the price reduced, or iii) terminate the contract. Specific conditions and requirements are established for each solution.
- Depending on the type of supply, the duration of the **seller's liability** is:
 - a two-year period if the producer carries out a single act or a series of individual acts; and
 - the duration of the contract if the producer carries out a continuous act.
- Depending on the type of supply, the **burden of proof** applicable to the seller is:
 - a one-year period if the producer carries out a single act or a series of individual acts; and
 - the duration of the contract if the producer carries out a continuous act.

Decree Law 84/2021 also introduces a new figure, the **online marketplace provider**, which may be considered a contractual partner of the seller when one of several



requirements is met (e.g., the contract is entered into exclusively through means made available by the online marketplace provider).

This affinity generates a **joint liability** between the provider of the online marketplace and the seller, towards the consumer, in the case of lack of conformity of the digital good, content or service. This increases the duty to provide information to the consumer.

Decree Law 84/2021 also establishes a penalty regime that grants the *Autoridade de Segurança Alimentar e Económica* (ASAE) and the *Instituto dos Mercados Públicos, do Imobiliário e da Construção*, I. P. (IMPIC, I. P.) with the power to supervise and instruct the administrative offense proceedings they consider necessary, as well as to apply the respective fines and accessory penalties established. However, IMPIC, I. P.'s powers to do this are limited to real estate.

Final provisions

Under article 55 of Decree Law 84/2021, it will come into force on January 1, 2022.



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