
Decree-Law 123/2023: General Contractual Clauses Commission and amendments to the General Contractual Clauses regime

Decree-Law 123/2023—creating the General Contractual Clauses Commission and Portal and amending the General Contractual Clauses regime for the eighth time—has been published.

Portugal - Legal Update

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Key aspects

- Decree-Law 123/2023 of December 26 (“Decree-Law 123/2023”) creates the General Contractual Clauses Commission (the “Commission”), which is responsible for analyzing contracts containing general contractual clauses to ensure compliance with the current regime and to guarantee consumer protection.
- Decree-Law 123/2023 also amends Decree-Law 446/85 of October 25 to include the composition and functioning of the Commission and the creation of the General Contractual Clauses Portal.



Creation of the General Contractual Clauses Commission

Decree-Law 123/2023 creates the General Contractual Clauses Commission, an independent administrative advisory body that will work alongside government members. The Commission has various powers. These include (i) analyzing contracts containing general contractual clauses or general contractual clause templates for future use; (ii) issuing recommendations to remove or amend clauses, informing the Public Prosecutor's Office of non-compliance with the obligation to refrain from using clauses that the Commission considers unfair; and (iii) issuing opinions.

The Commission's powers are residual, as it is designed for economic activity sectors without regulatory or market oversight bodies to verify the legality of general contractual clauses. Its aim is to reduce disparities between sectors and increase consumer protection guarantees.

Contracts with general contractual clauses are common in many economic activity sectors. Therefore, to guarantee consumer protection and harmonized solutions, Decree-Law 123/2023 establishes a principle of collaboration between the Commission and the competent regulatory and market oversight entities in each sector. The objective is to prepare standard form contracts that comply with the legal regime on general contractual clauses. These contracts can be voluntarily adopted in regulated sectors or those subject to specific legislation.

The Commission will have the power to:

- request, for analysis, contracts containing general contractual clauses or general contractual clause templates prepared for future use;
- issue recommendations to remove or amend general contractual clauses;
- inform the Public Prosecutor's Office and, where applicable, the infringer, of any non-compliance;
- issue opinions on potentially prohibited general contractual clauses at the request of the courts;
- appraise legislative initiatives concerning the prohibition or regulation of general contractual clauses; and
- manage, organize, regularly update, and maintain the General Contractual Clauses Portal.



General Contractual Clauses Portal

The current legal regime already provides for the registration and publication of court decisions that prohibit the use of certain general contractual clauses or declare the invalidity of clauses included in individual contracts.

However, the current opportunity is being taken to strengthen the existing system by creating the General Contractual Clauses Portal. In addition to the above court decisions, this portal will also publish recommendations, standard form contracts and anonymized decisions that may be useful to other companies operating in the market.

Final provisions

Following the publication of Decree-Law 123/2023, companies should:

- pay attention to the activities of the General Contractual Clauses Commission or the respective regulatory body concerning all aspects related to general contractual clauses;
- review contracts that contain general contractual clauses to ensure that they do not contain any unfair or prohibited contractual clauses under the current legislation; and
- be aware of the publication of opinions and recommendations prepared by the Commission on the General Contractual Clauses Portal.

Decree-Law 123/2023 entered into force on December 27, 2023.

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