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Content

I. European Rules on the Sale of Consumer Goods and Supply of Digital Content and Services.

Directive 2019/770 and Directive 2019/771 were published on May 22, 2019, relating respectively to contracts for the supply of digital content and services and contracts for the sale of goods.

These Directives aim, in a complementary manner, to improve the working of the internal market, ensuring greater consumer protection through the introduction of rules on the conformity of the goods, means of redress in the event of nonconformity of goods and procedures for the exercise of such means.

Directive 2019/771 amends Regulation 2017/2394 and Directive 2009/22/EC and revokes Directive 1999/44/EC.

With regard to the concept of conformity of the goods, both Directives have requirements (i) subjective (which refer to the quality, quantity and functionality of the goods, as provided for in the contract of sale concluded with the consumer) and (ii) objective (relating to the minimum conditions that the purchased goods must meet). Those conditions are cumulative, promoting consumer protection and safety.

We emphasise the introduction of a subjective criterion of conformity which goes beyond the moment of sale of the goods or the provision of the service, having an ongoing nature: the goods must be provided with all their updates as stipulated in the purchase and sale contract. In the event of the supply of digital content and services, the seller and the professional are duty bound to offer updates on the goods sold.

Regarding the transposition of the Directive, Member States are given the possibility of opting between several alternatives, with regard to different matters, namely:

i. Both Directives extend the deadline to impute lack of conformity to the seller or the service provider, establishing a period of two years from the delivery of the good or provision of the service, in which the seller or professional are held accountable.
ii. The period referred to in the preceding point is a minimum, Member States having the possibility of introducing longer terms.

As regards the burden of proof, the Directives determine that any lack of conformity occurring within one year of the delivery of the goods or provision of the services shall be deemed to exist at the time of delivery or supply, which increases consumer

protection and the ability of sellers and service providers be held accountable. This period may also be extended up to two years.

Lastly, Member States have also the right to maintain or introduce rules determining that, for consumers to enjoy their rights, they are duty bound to inform the seller of lack of conformity within two months of the date on which the consumer shall have detected it.

One must take into account some of the specific features of Directive 2019/770 concerning contracts for the supply of digital content and services, of which we underscore:

i. The vast digital reality covered by the Directive, including the data produced and supplied in digital format (*e.g.* online music), services that enable the creation, processing or storage of data in digital format (*e.g.* cloud storage), services that enable the sharing of data (*e.g.* Facebook, YouTube, etc.) and any durable medium used exclusively as a digital-content vehicle (*e.g.* DVD).
ii. The possibility of the professional modifying the digital content by meeting the following requirements:

- Insertion of clauses in the contract providing valid reasons for the alteration;
- The alteration does not entail additional costs for the consumer;
- Clear and understandable notice of the modification to the consumer;
- Information on the characteristics and timing of the alteration having been provided, giving reasonable notice and on a durable medium and having also provided consumers with information on their rights (*i*) to terminate the contract (should the alteration entail a negative impact on access to or use of the digital content or services) or (*ii*) to maintain the digital content or services that have remained unchanged.

iii. The possibility of the consumers retrieving the digital content they have provided or created during use of the use of digital content or services provided by the professional. Except digital content that:

- is of no use outside the context of the digital content or services;
- relates only to the activity of the consumer when using the digital content or services provided; and
- those that have been aggregated to other data and, as such, cannot be disaggregated, or the disaggregation of which entails disproportionate effort.

The transposition of both Directives shall take place by July 1, 2021 and the respective rules will be applicable as from January 1, 2022.

II. National Legislation

Decree-Law No. 47/2019. D.R. No. 72, Series I of 2019-04-11

This decree-law creates the early-warning mechanism (EWM) regarding the economic and financial situation of companies, consisting of a procedure of provision of economic and financial information to members of the management bodies of companies having their registered office in Portugal, on an annual basis, constituting a mechanism in support of business decision and management based on statistical analysis.
This decree-law came into effect on April 12, 2019.

Order No. 4510/2019 - D.R. No. 85/2019, Series II of 2019-05-03

This order, issued by the office of the Secretary of State for Fiscal Affairs and by the Secretary of State for Justice, determined that the initial declaration of the beneficial owner of the entities subject to company registration that had already been incorporated on October 1, 2018, may be carried, with no penalty, until June 30, 2019.

Ordinance No. 143/2019 D.R. No. 2019, Series I of 2019-05-14

This order-in-council governs the procedure for the allocation of recognition of the standing as 'Rural Entrepreneur" and defines rural areas within the scope of the grant of that standing, having come into force on May 15, 2019.

Law No. 35/2019. D.R. No. 100/2019, Series I of 2019-05-24

On May 25, 2019, Law No. 35/2019 came into force, amending the mandatory safety measures required in food and beverage establishments that have the spaces or rooms for dancing, and introduces the first amendment of Decree-Law No. 135/2014, of September 8.

Decree-Law No. 76/2019. D.R. No. 106, Series I of 03/06/2019

Decree-Law No. 76/2019 amending the legal regime applicable to the exercise of the activities of production, transport, distribution and sale of electricity and the organisation of the electricity markets, has been published.
This decree-law came into effect on June 4, 2019.

Ordinance No. 200/2019 D.R. No. 122/2019, Series I of 2019-06-28

This order-in-council, issued by the Ministry of Finance and the Ministry of Justice, set forth the term extension to the initial declaration of the beneficial owner until October 31, 2019, and revokes the articles 13 and 17 of the Ordinance No. 233/2018, August 21, having come into force on June 29, 2019.

III. National case law

Judgement of the Évora Court of Appeal, of May 2 2019, (Case No. 624/18.0T8BJA.E1)

The Évora Court of Appeal was asked to rule on the scope of an action for annulment of corporate resolution. The General Meeting of a company limited by shares took place on March 29, 2018, at which a resolution was passed on the net monthly salary of €5,000.00 of its managing director. The issue under discussion was to ascertain whether the amount of the remuneration would be consistent with the duties performed and the situation of the company under the terms of Article 255(2) of the Companies Code ("CSC").

The Court held that the resolution in casu was abusive and therefore voidable under Article 58(1) of the CSC, in that it had been proved that in 2015 the Company had returned a loss of €179,547.80 and recently required the members to put up supplementary capital contributions in the amount of €10,002.00, to which is added the fact that the director resides in Spain, rarely visiting the company's registered office or the farm, and did not perform day-to-day monitoring of the farm, which is entrusted to the workers.

Thus, the Court held that on voting the proposal to fix his remuneration at €5,000 net per month, the defendant's managing director sought "special equity advantages" for himself, knowing furthermore that by voting the said resolution he would cause serious damage to the company and to the other members, including the claimant.

Judgement of the Porto Court of Appeal, of April 11, 2019, (Case No. 2224/17).

This case arises within the scope of the resolution, at the general meeting, on the reduction of the share capital of a given public limited company, which was based on the fact that the share capital was excessive compared to the needs arising from the normal course of the business and taking into account the net equity situation, as proposed by the Board of Directors.

At the general meeting a resolution was passed to reduce the share capital by reducing the par value of all shares to €0.70, and the Board of Directors was authorised to pass a resolution on the reimbursement to the members of the capital released, in the proportion the shares held by them and through a judgement of timeliness in the light of the availability and liquidity of the company, ensuring the normal carrying on of its business.
This decision was taken unanimously by the members present or represented.

The dispute arises because the claimant, having a holding 12.74% of the share capital, the par value of which was reduced by €572,028.60 by virtue of that reduction of the share capital, filed an action against the company because of the fact that the amount by which his holding was reduced had not been repaid to him, although both the net equity, including the availability of cash and sight deposits, and also the declaration of the Chairman of the Board of Directors, encourage the repayment of the amount of the reduction the holding by virtue of the alteration of the share capital.

Now, the defendant objected, stating that the actual net position of the Company was not yet known, in that the 2016 accounts had not yet been approved, contending also that the excess of share capital should not be confused with excess liquidity.

The Court of the 1st instance judged the action totally unfounded, and the claimant appealed against this decision, stating that, in its decision, the Court of the first instance did not take the “Total Assets” into account.

Now, the Porto Court of Appeal clarifies that there is no dissent as to the claimant’s right to such repayment, the controversy lying in its enforceability and, while the latter believes that it can be done it right away, the defendant counters that the reimbursement is decided by the Board of Directors for reasons of timeliness and of the company's liquidity and that of the other subsidiaries, and that the reduction of the share capital constitutes a *negative variation and implies a statutory alteration entailing substitution of the amount of share capital entered in the articles of association prevailing at the time of the resolution by a lesser amount. All the rules dealing with amendment of the articles of association are therefore applicable to it.*

The Court of Appeal recalled, on the one hand, that the management of public limited companies is incumbent upon the Board of Directors and, on the other, that the will of the shareholders in the corporate resolution on the reduction of share capital expressed in the minutes of the General Meeting was to confer on the Board of Directors the faculty of reimbursing the capital and that the resolution did not conditioned this decision in time and that, therefore, the claimant does not have the right to demand immediate reimbursement.

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