

CHANGES TO RESTRICTIVE AND UNFAIR TRADE PRACTICES REGIMES - VIEIRA DE ALMEIDA

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Portugal has recently introduced changes in the rules applying both to restrictive and to unfair trade practices. The first amendments to the Restrictive Trade Practices Act were published on 8 October, 2015 (Decree-Law 220/2015) and came into force on 7 December.

These amendments rectify certain provisions contained in Decree-Law 166/201 by, namely, clarifying the calculation of the actual purchasing price for the purposes of determining the existence of a sale at a loss.

The new law deals away with two odd features of the old regime. The caveat that the law is only applicable to contracts "subject to Portuguese law" is now gone, which reduces the temptation to subject contracts to foreign law.

Particularly welcome is the disappearance of the discrimination between goods and services with origin or destination in and out of the European Union, insofar as all goods and services are now subject to the law, regardless of their origin or geographical destination. This eliminates a discrimination against producers and providers of services in the European Union whose objective could never be fathomed.

As regards sales at a loss, the notion of “actual price of purchase” was clarified. From now on, “actual price of purchase” is deemed to be “the unitary price indicated in the invoice regarding the purchase, net of payments or discounts directly and exclusively related with the transaction of the products at stake, as well of those indicated in credit and debit notes referring to that invoice and, furthermore, those that are identified in the invoice or, by its referral, in supply contracts or pricing lists that are in force at the time of the transaction and that are determinable at the time of the respective emission”.

Also in the area of sales at a loss, and in particular regarding discounts deferred over time such as is the case of “discount cards”, the existing rule is now restricted to products acquired *in the same establishment*. The discounts granted on a product of a particular supplier and which consist in the attribution of a right to offset in latter acquisitions of that product or other products should be attributed to the quantity of the same product sold by that supplier over the last 30 days only to products sold *in the same establishment*. This prevents the consideration of discounts on products sold in different establishments even if they belong to the same supplier.

The Unfair Trade Practices Act (Decree-Law 57/2008) has also been amended. The most important amendment is the enlargement of its scope to relationships between companies regarding misleading actions. It used to apply only to relationships between companies and consumers.

It is now prohibited, among companies, to provide false information, or even factually correct information, that induces or may induce into error in respect of the existence or nature of the good or service, the main features of the good or service, and the content and extension of the commitments undertaken by the service provider, the motivation of the commercial practice and the nature of the sales process, as well as the use of any statement or symbol indicating that the professional, the good or the service benefit, directly or indirectly, from sponsorship or other type of support.

Subject to the same rule are the price, the method to calculate the price or the existence of a specific advantage regarding the price, as well as the nature, attributes and rights of the service provider or of its agent.

This amendment occurred after the detection of fraudulent schemes carried out by companies in their trade with other companies.

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