

THE PRIME MINISTER'S OFFICE

Decree-Law No 78/2018

of 15 October 2018

The transposition into national law of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC involves the amendment of this Decree-Law in order to transpose Article 27(2) of the above Directive amending Directive 2011/83/EU on consumer rights. Consequently, this Decree-Law transposes this amendment, and applies *mutatis mutandis* to package travel, as regards travellers, language requirements in terms of contractual information contained in distance and off-premises contracts and certain formal requirements for distance contracts, communication by telephone and additional payments.

To this end, this Decree-Law amends Decree-Law No 24/2014 of 14 February 2014 as amended by Law No 47/2014 of 28 July 2014 laying down the legal arrangements applicable to distance and off-premises contracts.

Finally, this amendment process has also been used to clarify certain articles in the above-mentioned Decree-Law, to bring it more into line with Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

The Portuguese National Consumer Council was consulted.

Thus:

Pursuant to Article 198(1)(a) of the Constitution, the Government hereby decrees as follows:

Article 1

Purpose

This Decree-Law effects a second amendment to Decree-Law 24/2014 of 14 February 2014, as amended by Law 47/2014 of 28 July 2014, laying down the legal arrangements applicable to distance contracts and off-premises contracts.

Article 2

Amendment of Decree-Law No 24/2014 of 14 February 2014

Articles 2, 4, 5, 6, 10, 15 and 31 of Decree-Law No 24/2014 of 14 February 2014, in its current wording, are replaced by the following:

‘Article 2

[...]

1 — [...]

2 — [...]

a) [...]

b) [...]

c) [...]

d) [...]

e) [...]

f) [...]

g) [...]

h) Contracts relating to package travel within the meaning of Article 2(1)(p) of Decree-Law No 17/2018 of 8 March 2018 laying down rules on access to and exercise of the activities of travel and tourism agencies, without prejudice to Article 2(3);

i) [...]

j) [...]

l) [...]

m) [...]

n) [...]

3 — Without prejudice to the provisions in subparagraph (h) of the above paragraph, Article 5(2), (3), (4), (7) and (8) of this Decree-Law, Article 7(3) and Article 9-A and Article 9-D of Law No 24/96 of 31 July 1996, in its current wording, shall be applicable *mutatis mutandis* to package travel as regards travellers, as defined in Article 2(1)(p) and (q) of Decree-Law No 17/2018 of 8 March 2018, without prejudice to Article 2(3).

Article 4

[...]

1 — [...]

a) [...]

b) [...]

c) If different from the address provided in accordance with the points above, the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints.

d) [ex subparagraph (c)]

e) [ex subparagraph (d)]

f) [subparagraph (e)]

g) [subparagraph (f)]

h) [subparagraph (g)]

i) [ex subparagraph (h)]

j) [ex subparagraph (i)]

l) [ex subparagraph (j)]

m) [ex subparagraph (l)]

n) [ex subparagraph (m)]

o) [ex subparagraph (n)]

p) [ex subparagraph (o)]

q) [ex subparagraph (p)]

r) [ex subparagraph (q)]

s) [ex subparagraph (r)]

t) [ex subparagraph (s)]

- u) [ex subparagraph (t)]
- v) [ex subparagraph (u)]
- x) [ex subparagraph (v)]
- z) [ex subparagraph (x)]
- aa) [ex subparagraph (z)]

2 — The information set out in subparagraphs (l), (m) and (n) of the previous paragraph may be provided by means of the information template on the right of free cancellation in accordance with Section A of the Annex to this Decree-Law, of which it constitutes an integral part, where the supplier of goods or services has complied with his/her duty to provide information on these aspects, if these instructions are provided to the consumer correctly filled in.

3 — [...]

4 — Where there is a failure to comply with the duty to provide information with regard to additional charges or other costs referred to in subparagraphs (e), (f), (g), (h) and (i) of paragraph (1) or with regard to return costs for the goods as referred to in subparagraph (m) of paragraph (1), the consumer shall not be liable for these costs or charges.

5 — [...]

6 — For public auctions, the information set out in subparagraphs (a), (b) and (c) of paragraph (1) may be replaced by equivalent details regarding the auctioneer.

7 — [...]

Article 5

[...]

1 — [...]

2 — When, for distance contracts concluded by electronic means, the order placed by the consumer implies a payment obligation, the supplier of goods or services shall provide the consumer with the pre-contractual information referred to in subparagraphs (d), (e), (f), (g), (h), (i), (q) and (u) of paragraph (1) of the previous Article, in a clear and visible manner and immediately prior to the consumer concluding the order.

3 — [...]

4 — [...]

5 — Without prejudice to the duty to communicate the remaining information in accordance with the means of distance communication used, where the contract is concluded by way of a distance communication where there is limited space or time to disclose the information, the supplier of goods or services shall provide at least the pre-contractual information required in subparagraphs (a), (d), (e), (f), (g), (h), (i), (l) and (q) of subparagraph (1) of the previous Article, through this specific mean of communication and prior to the conclusion of the contract.

- 6 — [...]
- 7 — [...]
- 8 — [...]

Article 6

[...]

1 — The supplier of goods and services shall confirm the distance contract, on a durable medium, within five days of the date of conclusion of the contract and in any event, no later than the time of delivery of the goods or the beginning of the provision of the services.

2 — The confirmation of the contract referred to in the previous paragraph shall be provided at the time of delivery to the consumer, on a durable medium, of the pre-contractual information referred to in Article 4(1), except where the trader has already provided said information, on a durable medium, before the contract is concluded.

3 — (Repealed.)

Article 10

[...]

1 — [...]

2 — Where the supplier of goods or services does not comply with his/her duty to provide pre-contractual information as referred to in Article 4(1)(1), the period in which the right to free cancellation may be exercised shall be 12 months from the date of the end of the initial deadline referred to in the previous paragraph.

3 — Where, during the period referred to in the previous paragraph, the supplier of goods or services complies with his/her duty to provide the pre-contractual information referred to in Article 4(1)(1), the consumer shall have 14 days to cancel the contract starting from the date on which the information was received.

4 — [...]

5 — [...]

Article 15

[...]

1 — [...]

2 — [...]

3 — [...]

4 — [...]

5 — [...]

a) [...]

i) The service provider has not complied with his/her duty to provide the pre-contractual information referred to in Article 4(1)(l) or (n); or

- ii) [...]
- b) [...]
- i) [...]
- ii) [...]
- iii) [...]

6 — For distance contracts for service provision, the supply of water, gas or electricity (where not put up for sale in limited volumes or quantities), or urban heating, if the consumer requires such provision or supply to begin before the end of the withdrawal period provided for in Article 10, the trader shall require the consumer to make an express request for such.

Article 31

[...]

1 — [...]

a) [...]

b) [...]

c) Infringements of Article 19(2) and (3) and Article 28(1) shall be punishable by a fine ranging from €500.00 to €3 700.00.

2 — [...]

a) [...]

b) [...]

c) Infringements of Article 19(2) and (3) and Article 28(1) shall be punishable by a fine ranging from €3 500.00 to €35 000.00.

3 — [...].'

Article 3

Repeal provision

Article 6(3) and Article 27 of Decree-Law No 24/2014 of 14 February 2014, in their current wording, are repealed.

Article 4

Entry into force

This Decree-Law shall enter into force on 1 January 2019.

Seen and approved in the Council of Ministers on 13 September 2018 by — *António Luís Santos da Costa* — *Augusto Ernesto Santos Silva* — *Manuel de Herédia Caldeira Cabral*.

Promulgated on 4 October 2018.

For publication.

The President of the Republic, MARCELO REBELO DE SOUSA.

Countersigned on 10 October 2018.

The Prime Minister, *António Luís Santos da Costa*.