



## COMPETITION & EU

### UNFAIR TRADE PRACTICES

The long awaited Decree-Law 128/2019 was published today, 29 August 2019, which partially alters the legal regime on Unfair Trade Practices (PIRC), included in Decree-Law 166/2013, of 27 December. These amendments will enter into force on 1 January 2020.

This new law brings with it very relevant developments for the market, contributing to greater transparency and balance in the commercial relations between the various market operators, in particular the inclusion of express prohibition of unilateral issue and imposition of debit notes by the retailers on the suppliers, that has long been claimed by the industry. The following changes are the most relevant:

- Scope of application: widening of the scope of the previous law to include any practice that occurs in the national territory or that may have effects there, and not only covering companies established in the national territory.
- Balance in commercial relations: any contract or agreement between undertakings must be

based on the existence of effective trade-offs.

- Selling at a loss: introduction of clarifications on the interpretation of the legal regime and its concepts (e.g. discounts and payments). Note that debit and credit notes, for calculating discounts and payments payable for assessing the actual purchase price, may only be issued within 3 months of the invoice date to which they refer.
- Discriminatory Practices and Refusal to Supply: the rules previously laid down regarding the application of discriminatory prices or conditions and the refusal to supply are now repealed and other legal regimes such as the Competition Act apply.
- Abusive Practices: these include very significant changes to the range of commercial practices considered abusive, and with them the introduction of rules governing and restricting their use. Notably:
- Prohibition of business practices between companies resulting in the deduction, by one of the parties, of amounts due in respect of

invoice amounts due for the supply of goods or services, when

- (i) the reasons therefore are not adequately stated; and
  - (ii) a the other party takes a reasoned/justified position against it within 25 days.
- Prohibition of any unilateral practice aimed at or substantiating an imposition of:
    - (i) the anticipation of contract fulfillment, without compensation;
    - (ii) debts not contractually provided for (in the contract) after the supply of the goods or services.
  - The extension of the previous list of abusive practices that was only intended to protect the agri-food sector, and is now extended across all micro and small businesses, regardless of the sector of activity.
  - Enforcement: another significant change concerns the broader scope of action granted to ASAE (the Authority competent to supervise PIRC standards) with regard to access to corporate tax information through the conclusion of a protocol with the Tax Authority.
  - Further related to ASAE's powers, inspections are now foreseen, enhancing the pursuit of public interest in reprimanding these restrictive practices. In order to promote and enhance these actions, the protection of confidentiality is also ensured to any whistleblowers, be they companies or associations of companies. Thus, the provision of documentation or any other information that may facilitate an investigation by the competent Authority will not constitute a breach of any established statutory duty of secrecy.

- Finally, this new Decree Law now states that the Portuguese Competition Authority is a co-evaluating entity (in conjunction with the Portuguese DG for Economic Activities) with respect to PIRC.

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