

Benchmarking of existing national legal e-business practices

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Portugal

1. General information on the national legal system

The Portuguese Republic is a democratic State that is based upon the rule of law, the sovereignty of the people, the pluralism of democratic expression and democratic political organisation, and respect and effective guarantees for fundamental rights and freedoms and the separation and inter-dependence of powers, and that has as its aims the achievement of economic, social and cultural democracy and the deepening of participatory democracy.

Portugal is a Member of the European Union since 1986. Portuguese Constitution establishes that rules made by the competent organs of international organizations to which Portugal belongs apply directly in national law to the extent that the constitutive treaty provides.

In Portuguese jurisdiction, the usual way to implement an EU Directive is to create a new and specific Law (from the Parliament) or Decree-Law (from the Council of Ministers) containing all regulatory provisions. Notwithstanding, if a Directive concerns an already regulated matter, the new provisions are most often implemented by changing the existing legislation.

The Portuguese Public Administration seeks to pursue the public interest and respects citizens' rights and interests as protected by law. Administrative bodies and agents are be subject to law, and in the performance of their functions shall act with respect for the principles of equality, proportionality, justice, impartiality and good faith.

Portugal has a single integrated judicial system. The Portuguese court system is motivated by the continental Europe tradition, particularly Germany.

Regarding the sources of law, written legislation is the most important legal source. Court decisions are also considered important sources of law, but courts are not required to follow previous precedence even if it originates from an Appeal Court in the judiciary system or even unified jurisprudence. Doctrine and fair and traditional practices play an insignificant role in Portuguese legal system.

Law 3/99 of 13 January 1999 regulates the administration of courts in Portugal. Portuguese legal system is made out of courts with specialist and specific jurisdiction. Specialist Courts are divided according to the nature of the subject matter. Accordingly, such courts have jurisdiction to deal with Criminal, Family, Labour, Commercial, Maritime and residual jurisdiction. As to Specific Courts, they are divided into three levels, depending on the amount of the claims.

Up into certain amounts, claims are decided by the Court of First Instance. Certain decisions from the Court of First Instance with higher amounts may be appealed to the high courts, and decisions from the high courts may be appealed to the Supreme Court if a certain threshold is achieved.

In Civil Law court cases there are two basic values for dealing with evidence, always with the purpose of finding the material correct result:

- 1) The parties of the dispute are free to select the evidence they want to produce before the court, and
- 2) The court's evaluation of the evidence it's dependent on the kind of evidence: official or authenticated documents are sufficient evidence, while oral testimony is freely evaluated by court.

In Portugal, the parties to a contract can also choose arbitration for settlement of disputes. Resorting to arbitration permits procedures to be more flexible and a time limit to be established for the decision to be issued. The arbitrators are responsible for losses resulting from the late issue of a decision. The speedy resolution of conflict is more economical than longer procedures given that above a certain sum arbitration is clearly cheaper than resorting to the law courts. The arbitration procedure and its decision are not public and only the parties involved have access to the decisions.

Consumers may, however, choose to bring disputes concerning delivery of goods and services, including disputes pertaining to e-commerce, before the Consumer Defence Institute (Instituto Nacional de Defesa do Consumidor), instead of the courts.

Though the decisions of the Instituto Nacional de Defesa do Consumidor are not binding nor enforceable, they are nonetheless usually followed by businesses. If a decision of the board is not followed, the Board has the right to bring the matter to the courts as a representative of the consumer.

It is also possible to have a complaint decided by the Arbitration Court for Consumer Disputes, should both parties agree on the submission of the matter to arbitration. This procedure is not very expensive as the Government bears most of the related costs.

2. Electronic signatures

2.1 National legislation and administrative practices

Directive 1999/93/EC on electronic signatures was implemented by Decree-Law 62/2003, of 3 April 2003. This Decree-Law amends Decree-Law 290-D/99, of 2 August also on electronic signatures. For this reason, electronic signatures regulations are known by the name of the latter Decree-Law. For this reason we will hereinafter only make reference to Decree-Law 290-D/99.

Under the 1999 statute an electronic signature should be defined as: the result of an electronic processing of data which results in an individual and exclusive right and of being used to confirm the authorship of the electronic document to which it is attached in such a way that: i) uniquely identifies the signatory as the author of the document; ii) it can be attached to the document on the signatory's sole discretion; iii) it is linked with the document in such a way that it allows to detect any subsequent change to the content of the document. The 2003 statute establishes the definition of electronic signature and advanced electronic signature in accordance with Directive 1999/93/EC.

The 2003 statute also implements 1999/93/EC Directive in relation to some concepts such as signature-creation data, signature-creation device, secure-signature-creation device, certificate, qualified certificate. It is important to mention that the 1999 was drafted and published before the 1999/93/EC Directive and for this reason this Decree-Law makes a specific reference to the fact that future changes to this statute would have to occur as a result of EU decisions and regulations and technology development. Also, the Portuguese Government in 1999 had a very ambitious e-agenda (electronic government, e-commerce development, etc.) and the approval of this statute was part of that agenda. It was important for Minister of Technology, Prof. Mariano Gago, to have this statute approved.

Pursuant to Decree-Law 290-D/99 an electronic document is deemed as a valid written document when its content may be represented as a written declaration. As per Article 3.2 of this Decree-Law, should the electronic document include an *Assinatura Electrónica Qualificada* ("Qualified Electronic Signature")¹ certified by a certification-service-

¹ Under Article 2.g) of Decree-Law 290D/99, *Assinatura Electrónica Qualificada* ("Qualified Electronic Signature") is a digital signature or other type of advanced electronic signature that complies with the security requirements of a digital signature based on a qualified certificate and created by a secure-signature-creation device.

provider which has been registered with the Portuguese entity responsible for supervising certification-service-providers, such document will make evidence as any other signed private paper document pursuant to Article 376 of the Civil Code. Article 376 of the Civil Code establishes that any document with the written signature of its author makes full evidence in relation to the contents of the declarations contained therein. This assumption is also applicable in relation to written signatures executed before a public notary (containing the relevant notary seal). However, it must be pointed out that Article 376 of the Civil Code also allows the relevant party to challenge the authenticity of the document. This provision is applicable to signatures in general. Nevertheless, this does not happen often and there are no records in relation to the challenging of electronic signatures in the Portuguese courts. In fact, Decree-Law 290-D/99 establishes the presumption that i) the author who has signed the document is the owner of same or has the necessary powers to act on behalf of the legal person to which such signature relates to; ii) the author had the clear intention to include the electronic signature; and iii) the electronic document was not changed.

Under Article 3.5 of Decree-Law 290-D/99 (as amended by Decree-Law 62/2003) electronic documents without a *Assinatura Electrónica Qualificada* ("Qualified Electronic Signature") certified by a certification-service-provider which has been registered with the Portuguese entity responsible for supervising certification-service-providers will be admissible as evidence under the general terms of laws, i.e. just like any other signed document not certified by a third party. In other words, Article 3 of the Decree-Law fully complies with Article 5 of the Directive.

Decree-Law 290-D/99 also allows the parties to an agreement to agree on other means which could give the same force as set forth in Article 376 of the Civil Code, namely in relation to other forms of electronic signature.

As to the other electronic documents without a Qualified Electronic Signature, the court will analyse them under general terms of law.

Public bodies may also issue electronic documents with electronic signatures under the terms set out in Decree-Law 290-D/99. Pursuant to Resolution 137/2005, of 17 August, all public bodies have to implement procedures allowing the processing of electronic invoice until 31 December 2006.

A Qualified Electronic Signature is defined as a form of advanced electronic signature based on a qualified certificate created by secure-signature-creation device and that complies with the following security requirements: based on an asymmetric cryptographic system, comprising an algorithm or series of algorithms, such that a pair of asymmetric, exclusive and interdependent keys is created, one of which is private while the other is public, allowing the author,

on the one hand, to use the private key in order to claim authorship of the electronic document on which the signature is placed and to agree with the contents thereof, and the recipient, on the other hand, to use the public key to verify whether the signature was created through the corresponding private key and whether the initial electronic record has been altered since the signature was placed thereon.

Pursuant to Decree-Law 234/2000, of 25 September 2000, the entity responsible to supervising and registering the certification-service-providers in Portugal is the Conselho Técnico de Credenciação (Technical Council for Registration) of the Instituto das Tecnologias da Informação na Justiça (a public body responsible for the Information Technology services of the Minister of Justice).

Under Portaria (regulation) n.º 8-A/2001, of 3 January 2001, if the lawyers in a court case use electronic mail to deliver documents/requests/petitions, same will only be accepted to that extent that the documents filed contain a certified electronic signature. For this reason, the Portuguese Bar has entered into an agreement with MULTICERT (www.multicert.pt) in order to make available to all Portuguese lawyers electronic signatures with certificates from MULTICERT. The Bar ID card allows for the use of electronic signatures in the magnetic strip on the back of the card (.

It is also worth mentioning that MULTICERT in association with the Postal services (Correios de Portugal – www.ctt.pt) has created a Time-Stamp system allowing for the issuance of a certificate of the date and hour in which an electronic message was sent. This issue was particularly sensitive to the lawyers as they were not sure of the exact date the message would be deemed as received by the courts, since Decree-Law 290-D/99 establishes that the message is considered as retained by sender until the moment it is received by the addressee. For this reason, lawyers were used to send the documents by fax.

The use electronic signatures by lawyers has been growing, however, it was not possible to obtain any information on same from MULTICERT or from the Bar.

For the rest of the other industries, electronic signatures have not become very popular. The use of the Internet by the Tax Authorities has been, however, very popular either by taxpayers (namely for the Personal Income Tax) as by accountants. However, the access to these services is done by way secure webpages protected by a login and password. For this reason, there is no particular need in the market for electronic signature-related services and products.

The government has announced a plan to issue Identity Cards with electronic signatures. However, there is no timeframe for the deployment of the project due to uncertainty on its costs.

2.2 Cross border regulatory issues

Qualified Electronic Signatures certified by a registered certification-service-provider in another Member State of the European Union are recognized as legally equivalent to Qualified Electronic Signatures certified by a registered certification-service-provider in Portugal, pursuant to Decree-Law no. 290-D/99, as follows:

Qualified certificates issued by a certification-service-provider which is subject to the supervision system of another Member State of the European Union are recognized as legally equivalent to qualified certificates issued by a certification-service-provider established in Portugal.

Qualified certificates which are issued by certification-service-providers established in non-EU countries are recognized as legally equivalent to qualified certificates issued by a certification-service-provider established in Portugal, to the extent that one of the following circumstances occurs:

- a) The certification-service-provider fulfils the requirements laid down in Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 and has been accredited under an accreditation scheme established in a Member State of the European Union;
- b) The certificate is guaranteed by a certification-service-provider established within the European Union which fulfils the requirements laid down in this Directive;
- c) The certificate or the certification-service-provider is recognized under an international agreement binding the Portuguese State.

3. General elements of electronic contract law

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through Decree-Law No. 143/2001, of 26 April 2001.

Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees has been implemented in national law through Decree-Law No. 67/2003, of 8 April 2003. The national law contains a 2-year limitation period in which the seller can be held liable for the non-conformity for assets and a 5-year limitation period for real estate assets. In case of second hand assets, the parties may agree on a one-year limitation period. It is also worth mentioning that the buyer must inform the seller of the lack of conformity within a period of two months from the date on which he detected such a lack of conformity. For real estate this period is extended to one-year.

Directive 1998/6/EC on Price Indications has been implemented through Decree-Law 162/99, of 13 March 1999. The Directive's obligations concerning correct and complete indication of the selling price have been correctly implemented by way of an amendment to Decree-Law n.º 138/90, of 26 April 1990.

Directive 2000/31/EC on information society services, in particular electronic commerce has been implemented through Decree-Law No. 7/2004, of 7 January 2003.

Decree-Law 95/2006, of 29 May 2006, implemented Directive 2002/65/EC on distance marketing of consumer financial services.

3.1 National legal and administrative practices

Except for certain distance selling and e-commerce related issues, most of the issues related with contracts are governed by the Civil Code and Decree-Law No. 446/85, of 25 October 1985 (as amended by Decree-Laws No. 220/95, of 31 August 1995, No. 249/99, of 7 July 1999) ("Standard Clauses Regime").

Pursuant to the Civil Code, it is only required to have a written contract in the cases set forth in the law. As such, the declarations of the parties made by electronic means are valid as traditional paper contracts, except in the cases established by law. Among these cases we can include the contracts where the signatures have to be executed in front of a public notary, such as a promissory contract for the sale and purchase of real estate property.

There are no formal definitions of the concepts of offer/acceptance in Portuguese contract law. Pursuant to article 224 of the Civil Code, an offer is deemed as valid as long as the addressee of the offer receives it. The offer will remain as valid, except when the offeror: 1) establishes a deadline for the duration of the offer; and 2) declares to the addressee that the offer is no longer valid and has not received acceptance from the addressee. The acceptance of the offer will be deemed as valid as soon as the offeror is aware of it.

A contractual obligation will, however, only be enforced by the courts, if the party claiming the existence of the obligation can prove before the courts that the parties have actually entered into a valid contract. In other words, a written contract is the adequate procedure to prove the terms under which the parties have made their agreement.

It is also important to point out that, should the parties agree orally on a particular issue not covered by the written contract and such agreement is subject to a dispute, the court will likely take into consideration the provisions set forth in the written contract, as it would be necessary to have witness' hearings.

Pursuant to article 26 of Decree-Law 7/2004, implementing directive 2000/31 EC, electronic declarations will be deemed as written declarations, provided that they are included in a form that warrants an adequate level of understanding and reliability.

Pursuant to the Standard Clauses Regime, there are certain provisions which are not acceptable in contracts where the parties cannot negotiate them. The purpose of this Regime is to avoid that the offering party may propose unreasonable and unfair clauses due to its bargaining power.

The Standard Clauses Regime establishes two different frameworks for the relationships between A) business entities; and B) business entities and consumers (which also include the provisions set for A above). For each of the frameworks there are provisions which are forbidden, while there are other provisions not allowed to the extent that they are not acceptable for a certain specific contract taking into consideration the goods or services provided and the balance of the other provisions of the contract.

A standard clause where the party providing the standard clauses grants to itself the right to interpret the clauses of the contract is an example of a clause forbidden between business entities.

One example of forbidden clauses between business entities and consumers are the clauses where the offering party reserves to itself the right to check and control the quality of the goods and services being provided.

3.1.1 Electronic invitation to make an offer and submission of an offer

An invitation to make an offer by electronic means is a valid procedure under Portuguese law as long as same contains all the relevant information and the other party just as to accept such invitation.

In relation to B2C contracts, pursuant Article 25 of Decree-Law 7/2004 (transposing Directive 2000/31/EC) standard clauses applicable to contracts with consumers establishing that the offer or submission of an offer must be executed by electronic means are not valid.

As long as all the relevant information is made available to the other party, clicking on a "I Agree" button on a webpage will suffice to conclude a contract.

Under Decree-Law 143/2001, of 26 April 2001, – implementing Directive 97/7/EC – the consumer must receive, no latter than the moment in which the goods or services are delivered or provided to the consumer, written confirmation (or in another reliable mean) of the following information: (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address; (b) the main characteristics of the goods or services; (c) the price of the goods or services including all taxes; (d) delivery costs, where appropriate; (e) the arrangements for payment, delivery or performance; (f) the existence of a right of withdrawal, except in the cases referred to in Article 7 of this Decree-Law (containing the same cases as mentioned in Article 6.3 of the Directive). The obligation to provide the above mentioned information will not be applicable if such information had already been provided to consumer.

Additionally, it must always be provided to consumer written information on the conditions and procedures for exercising the right of withdrawal; the geographical address of the place of business of the supplier to which the consumer may address any complaints; information on after-sales services and commercial guarantees which may exist; the conclusion for cancelling the contract, where it is of unspecified duration or a duration exceeding one year.

Article 6 of Decree-Law 143/2001 also establishes a period of 14 days for the consumer to withdraw from the contract without making any payment and without any grounds.

Article 25 of Decree-Law 7/2004 does not allow the conclusion by electronic means of contracts listed in Art. 9 (2) of Directive 2000/31. Also, contracts where the law requires that the signatures of the parties are certified by a public notary cannot be concluded by electronic means. For all the other contracts it is possible to execute them by electronic means.

We are not aware of any case law decisions related to electronic contract conclusion in relation to Directive 1993/13/EC and Directive 1998/6/EC.

The use of electronic means on e-banking and e-trading websites as been very popular in Portugal. In relation to e-commerce websites for consumers, the most popular e-commerce websites in Portugal are not Portuguese but American like amazon.com.

Most of the website we have visited make no reference term for the consumer to withdraw from the contract. In one particular case – www.optibarca.com – the term was 10 days and not the 14 days set out in Article 6.1 of Decree-Law 143/2001. It is also quite surprising that there was a press interview with the general manager of www.miau.pt – an e-auction Portuguese website – where he mentioned that they were guided by the distance selling regulations, although Decree-Law 143/2001 explicitly mentions in its Article 3, that it is not applicable to auctions.

On the other hand, most of the websites are more concerned with the look-and-feel of the website design rather than with the intention to comply with the law. This situation results from the fact that Portuguese courts are very inefficient and for small sums complaints, website owners do not expect consumers to file any complaints. Additionally, the consumers' associations are more concerned with other issues as e-commerce represents a small part of the commerce industry in Portugal.

In relation to the origin of the goods sold online, although some should be considered as part of the essential information which must be provided to consumers under the Consumer Protection Law, most of the websites visited did not make reference to the country of origin of the goods.

There are no published court decisions in relation to any e-commerce contracts, and for that reason it is not possible to ascertain to which extent the Portuguese statutes implementing directives related to electronic contract conclusion have been accepted.

3.1.2 Electronic acceptance

Acceptances are binding under the Portuguese Civil Code when they are 1) received by the legal person who has made an offer within the acceptance period and 2) are in compliance with the offer.

Pursuant to Article 29 of Decree-Law 7/2004, the service provider as soon as he receives an order by electronic means should acknowledge receipt by electronic means, unless otherwise agreed with the other party. The main problem with this procedure is the fact that reference is made to the expression "as soon as" the order is received, which very difficult to establish unless there is an audit to the server of the service provider. The duty to acknowledge

receipt is not applicable in the cases where the consumer immediately starts using the service online. On the other hand, there is some inconsistency between the expression "as soon as" mentioned above, and the fact that under Decree-Law 143/2001 (implementing the Distance Selling Directive) the provider must provide the acknowledge of receipt confirmation with the relevant information within a reasonable timeframe in the cases where there is no delivery of products and, in the cases in which such delivery occurs, no latter than the moment the goods are delivered.

3.1.2.1 Information obligations in relation to electronic contract conclusion

The legislation in Portugal complies with the requirements laid down in Article 5 of Directive 2000/31/EC on electronic commerce (Article 10 of Decree-Law 7/2004), Articles 4 and 5 of Directive 97/7/EC on distance contracts (articles 4 and 5 of Decree-Law 143/2001) regarding the information that must be given to the consumer before and after the order is placed. The text of the Portuguese regulations follows the same text of the Portuguese version of the relevant Directive.

Arts. 3, 4 and 5 of Directive 2002/65/EC on distance marketing of consumer financial services where implemented in Portugal by way of Decree-Law 95/2006, of 29 May 2006. However, it must be pointed out that this Decree-Law establishes that in addition to said information, any other information requirements that are set forth in other regulations applicable to financial services have to be met. Although it may not be relevant, we have not found the implementation of the second sentence of Article 5.3 of Directive 2002/65/EC in relation to the consumer's right to change the means of distance communication used.

3.1.2.2 Standard terms and unfair clauses

Standard Terms are accepted by Portuguese law for the execution of contracts, including electronic contracts, provided that such terms comply with the Standard Clauses Regime (as described above) in general contract law. Accordingly, as long as they have had the opportunity to read those terms before the acceptance, consumers and businesses are bound by such terms from the moment they accept them.

Portuguese law does not make any specific reference in relation to the validity of standard terms that are available to the buyer on the homepage of the seller. However, as long as the buyer can easily access such information, and therefore, general information duties towards consumer are met buy seller, such standard terms would be enforceable.

On the other hand, consumers are bound by standard terms by ticking acceptance to the general terms of the the supplier, as long as they can print or save such information.

All provisions not complying with the Standard Clauses Regime are deemed as null and void. If the clauses that are null and void are not essential to the contract then the remaining clauses would be deemed as valid (what happens in most of the cases). Otherwise the contract is deemed as null and void. Pursuant to Article 292 of the Civil Code, the court may also re-balance the contract or convert the contract into another type of contract that is valid with the remaining valid provisions.

Pursuant to the Standard Clauses Regime, B2B and B2C standard clauses are governed by different frameworks, being the B2B framework more flexible.

3.1.3 Choice of law and forum

Portugal has ratified the Rome Convention on the law applicable to contractual obligations.

Portugal is a party to Council Regulation (EC) No 44/2001 that replaces the Brussels and Lugano Conventions.

Portugal is not a member of the United Nations Convention on the International Sale of Goods (CISG).

Directive 2000/31/EC on electronic commerce is based on a country of origin principle, which provides that information society services are only required to comply with the requirements of the Member State in which the service provider is located.

Pursuant to the Standard Clauses Regime, irrespective of the choice of law of the parties, this regime will always be applicable whenever there is a relevant connexion with the territory of the Member-States.

3.2 Cross border regulatory issues

During the research, no specific court rulings on the use of electronic contracts in cross-border trade between enterprises have been identified. However, it seems reasonable to assume that especially small and medium-sized enterprises are unaware of the specific legal status of electronic contracts agreed with trade partners from another Member State. This could be an obstacle to cross-border use of electronic contracts.

4. Electronic invoicing, payment and other matters related to execution of electronic contracts

4.1 National legislation and administrative practices

4.1.1 Electronic Invoicing

On September 1999, Portugal has implemented Decree-Law 375/99 of 18 September 1999, aiming to induce the expansion of electronic commerce in respect to electronic invoicing, since the absence of rules was creating a significant barrier to the use of electronic communications and electronic commerce. This Decree-Law has established that electronic and paper invoices would have the same value.

Later, on 2003, Portugal has implemented Directive 2001/115/EC of 20 December, through Decree-Law 256/2003, of 21 October 2003, by introducing several changes to the Portuguese VAT Code, in order to fulfil the main purposes of said Directive as, for example, the governing of the use of electronic invoicing and the electronic storage of invoices, as well as the possibility of self-billing and of the outsourcing of invoicing operations. This new Decree-Law 256/2003 expressly revoked Decree-Law 375/99.

Decree Law No. 256/2003 establishes that invoices can be issued by electronic means, subject to the acceptance of same by the receiver, and provided that the authenticity of the origin and the integrity of the contents are guaranteed by means of an Advanced Electronic Signature or Electronic Data Interchange.

This Decree-Law also requires that a list with the electronic invoices is printed and preserved in relation to each taxable period. As such, the electronic invoices can be stored by electronic means, while the opposite is not possible, i.e., it is not possible to keep electronic records of paper invoices and destroying the original paper invoices. The provisions on storage of electronic invoices also require that same are always available for direct and immediate access, and their authenticity of origin and integrity of the contents must always be ensured.

Portuguese rules do not require invoices to be signed.

Due to the fact that it is necessary that both parties agree on the use of electronic invoices, the use of same as been limited to cases where two companies work on a regular basis. Also, in many cases this as been possible as a result of the use of EDI systems between those companies.

4.1.2 *Electronic payment*

On 2001, Portugal has implemented Directive 97/7/EC of 20 May 1997 through Decree-Law 143/2001, of 26 April 2001. Pursuant to Article 10 of this Decree Law, the price of goods and services for distance contracts can be paid by any suitable mean (e.g. payment by direct bank transfer or via electronic money systems), including credit or debit card. We are not aware of any problems related with the transposition of this Directive.

In addition, consumers have the right to request cancellation of a payment whenever fraudulent use has been made with his payment card in connection with distance contracts covered by said Decree-Law. In this case, consumers are given the right to receive the amounts paid without his consent, being the banking entity that issued the payment card the responsible party for repaying such amounts. This must occur within sixty days from the day a grounded request was filed by consumer. Moreover, any provision previously agreed by the parties contrary to this regime will be deemed as null and void.

In relation to Art. 8 of Directive 97/7/EC, Decree-Law 95/2006 establishes that in case of fraudulent use of card, the owner of same may request the entity that has issued the card that the relevant payment operation is cancelled. This right may only be exercised by consumer no later than 30 days from the day in which consumer became aware of such fraudulent use. The issuer of the card must return the amounts charged a result of the fraudulent use within a maximum period of 60 days from the request by consumer.

It is also worth mentioning that there are no specific provisions on the cancellation of electronic invoices as a result of fraudulent use of debit or credit cards. On the other hand, direct bank transfers are excluded from this regime, irrespective of the fact that such orders were made using the Bank's online system.

4.1.3 *Delivery of the good or provision of services ordered electronically and withdrawal period*

Under Decree-Law 143/2001, unless otherwise agreed between the parties, the supplier must carry out the order within a maximum period of 30 days from the day following the date consumer ordered the products or services.

Pursuant to Article 6 of Decree-Law 143/2001, no latter than 14 days from the day of the order, consumer may freely terminate the contract, although the parties may agree on a longer period. The term starts to count on: the date of deliver of goods; date of execution of the contract in the case of provision of services. If

consumer has exercised his right to terminate the contract, the supplier is under the obligation to refund the amount received within 30 days at no extra cost.

On the other hand, in case of termination, the consumer shall keep the goods in order to return them in good conditions of use to the supplier or to a third person mentioned in the contract within a period no later than 30 days from delivery.

With regard to the means used to ensure compliance with contractual and consumer rights, Decree-Law 143/2001 establishes several cases where fines may be applied whenever any unlawful practices or violation of legal rules occur. A designated national administrative authority ("*Autoridade de Segurança Alimentar e Económica*") is the competent entity to carry out the legal procedures in this field. In case of non-compliance with the provisions of Decree-Law 7/2004, additional fines may be applicable.

The entity responsible for supervising compliance with Decree-Law 95/2006, on the distance marketing of financial services, are the Bank of Portugal, the Portuguese Securities Exchange Commission and the Portuguese Insurance Institute, depending on the financial services involved. Additionally, the Consumer Institute may also supervise the financial services provided under this Decree-Law in relation to advertising issues.

4.1.4 Non-performance of the obligation to deliver or late delivery

Where a supplier fails to perform his duties under a contract on the grounds that the goods or services ordered are unavailable, consumer must be informed of this situation and must be able to obtain a refund of any sums paid as soon as possible and, in any case, no later than 30 days. Nevertheless, the supplier may provide the consumer with goods or services of equivalent quality and price if this possibility has been agreed. Should the consumer decide to terminate the agreement all returning expenses shall be borne by supplier.

Note that this regime is applicable only to consumers and not to business, which were expressly excluded by Directive 97/7/CE and also by Decree Law 143/2001, of 26 April. As such, B2B transactions are subject to general law rules.

4.1.5 Right of withdrawal from the contract in B2C transactions on goods and services

The minimum period of right of withdrawal in Portugal for consumers in B2C contracts is 14 days.

The period of right of withdrawal in Portugal for consumers regarding the distance marketing of financial services is 14 days, except for life

insurance agreements and open pension funds in which case the term is extended to 30 days. The term is counted from the execution of the contract or from the date of delivery to consumer of the terms and conditions of the contract and other mandatory information.

4.1.6 *Delivery of a good that is not in conformity with the contract*

Portugal has implemented Directive 1999/44/EC, of 25 May 1999, through Decree-Law 67/2003, of 8 April 2003, which has also introduced changes into the existing consumer protection regime (contained in Law 24/96, of 31 July).

Decree-Law 67/2003 establishes that the supplier shall deliver goods in conformity with the contract to the consumer. Article 2 of Decree Law No. 67/2003 sets forth the presumption that consumer goods are not in conformity with the contract: (i) if they do not comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model; (ii) if they do not show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling; (iii) if they are not fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted; (iv) if they are not fit for the purposes for which goods of the same type are normally used.

Conformity exists if at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware, of the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.

This article also establishes that lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility. This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

Seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered. In this case, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement (unless this is impossible or disproportionate), or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods. The terms "free of charge" refer to the necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials.

Decree-Law further mentions that right to terminate the contract or reduction made in the price may be performed even if the good has deteriorated for a reason not imputable to the seller (this is a more stringent provision, allowed by article 8 of directive).

The consumer may perform these rights when the lack of conformity becomes apparent within two or five years as from delivery of the goods, respectively for movable property and real estate. This disposition respects the minimum period demand of article 5 (1) of the Directive.

4.2 Cross border regulatory issues

The current existing regime for the acceptance of electronic invoices is applicable to all invoices, whether issued in Portugal or in another Member State.

A company based in Portugal should ensure that all issued invoices fulfil the legal requirements foreseen in Portuguese law, namely by ensuring the authenticity of their origin and integrity of their content, either through Advanced Electronic Signature or an Electronic Data Interchange system. All invoices received by any other means than these are not considered as being electronic invoices.

Invoices issued and sent by a company based in another Member State respecting the same requirements shall be therefore valid in Portugal. Note that Decree Law No. 62/2003 (legal regime for electronic documents and electronic signatures) establishes, in article 38, that qualified electronic signatures certified by a certifying entity accredited in another Member State of the European Union shall be recognized as legally equivalent to qualified electronic signatures certified by a certifying entity accredited pursuant to this statutory instrument. Qualified certificates issued by a certifying entity which is subject to a supervision system under another Member State of the European Union shall be recognized as legally equivalent to qualified certificates issued by a certifying entity established in Portugal.

The Portuguese banking system can be considered as very sophisticated, allowing companies to use corporate e-banking solutions with many forms of electronic payment and, for that reason, most SMEs use these services as well as large companies. Many Portuguese banks have established the growth of the number of corporate clients using e-banking services as one of their priorities. As such, bank employees are continuously insisting with clients so that they use e-banking services.

Cross border electronic payments are included among the features made available by e-banking services in Portugal.

Finally, Portuguese companies are aware that in order to get payment from customers from another Member State they do not need to open a bank account in every Member State.

5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing

5.1 Main legal and administrative barriers to e-business

The following main legal and administrative barriers to e-business in Portugal have been identified:

1. Compliance problems for online shops

Most of the information legal requirements were made in order to create trust between buyers and sellers. As most of the websites are not complying, it is not possible to build a trustworthy relationship allowing the increase of e-business

2. Government use of e-business

Government has not taken the necessary steps create a critical mass of e-business. As Portugal is a small market with a low GDP, companies do not feel the need to invest in e-business solutions.

3. Electronic Signatures

The use of logins and passwords have allowed the development of the use of the internet in many successful ways, including for the IRS and e-banking. For this reason, it has not been possible to find a driver that could increase the use of electronic signatures. On the other hand, printed emails without electronic signatures have been accepted by the courts.

4. Awareness of Regulation 2560/2001

There was no campaign organized by any public authority to bring awareness to Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in euro. Nevertheless, the banks have informed the corporate clients of this Regulation. On the other hand, consumers are not aware of the full consequences and advantages of this Regulation, however, consumers continue to use credit cards for any e-commerce cross border transactions in euro within a Member State. Should any credit card issuer or bank charge any additional charges, consumers will most likely accept them as valid.

5.2 National Authorities in charge of solving legal problems

Pursuant to Article 35.2 of Decree-Law 7/2004, implementing Directive 2000/31/EC, the entity responsible for all issues related with this Decree-Law is ANACOM – the Portuguese Telecom regulator, except in those cases where a different entity is established under the Law, ANACOM's website is the following: www.anacom.pt

ANNEX 1: E-business national legislation

Decree-Law 256/2003², of 21 October 2003, implementing Directive 2001/115/EC of 20 December

Decree-Law 143/2001³, of 26 April 2001, implementing Directive 97/7/EC of 20 May 1997

Decree-Law 290-D/99⁴, of 2 August 1999, on electronic signatures as amended by Decree-Law 62/2003, of 3 April 2003 (implementing Directive 1999/93/EC on electronic signatures).

Decree-Law 234/2000⁵, of 25 September 2000, determining the entity responsible to supervising and registering the certification-service-providers in Portugal

Regulation (Portaria) 8-A/2001⁶, of 3 January 2001, on the delivery of files to court by email with an electronic signature

Decree-Law No. 67/2003⁷, of 8 April 2003, implementing Directive 99/44/EC

Decree-Law n.º 138/90⁸, of 26 April 1990, as amended by Decree-Law 162/99, of 13 March 1999 (implementing Directive 1998/6/EC on Price Indications)

Decree-Law No. 7/2004⁹, of 7 January 2004, implementing Directive 2000/31.

Decree-Law 95/2006¹⁰, of 29 May 2006, implementing Directive 2002/65/EC on distance marketing of consumer financial services.

² Decreto-Lei N.º 256/2003 de 21 de Outubro

³ Decreto-Lei N.º 143/2001 de 26 de Abril

⁴ Decreto-Lei N.º 290-D/99 de 2 de Agosto

⁵ Decreto-Lei N.º 234/2000 de 25 de Setembro

⁶ Portaria N.º 8-A/2001 de 3 de Janeiro

⁷ Decreto-Lei N.º 67/2003 de 8 de Abril

⁸ Decreto-Lei N.º 138/90 de 26 de Abril

⁹ Decreto-Lei N.º 7/2004 de 7 de Janeiro

¹⁰ Decreto-Lei N.º 95/2006 de 29 de Maio

Decree-Law 446/85¹¹, of 25 October 1985 (as amended by Decree-Laws No. 220/95, of 31 August 1995, No. 249/99, of 7 July 1999) (“Standard Clauses Regime”)

¹¹ Decreto-Lei N.º 446/85 de 25 de Outubro, com as alterações resultantes do Decreto-Lei N.º 220/95 de 31 de Agosto e do Decreto-Lei N.º 249/99 de 7 de Julho