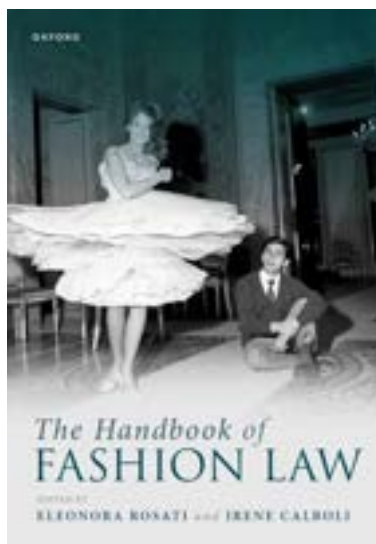


# NOVA CONSUMER LAB NEWSLETTER

Welcome to the NOVA Consumer Lab newsletter. The newsletter includes all the latest news from our centre and relevant information on consumption and consumer law in Portugal, Europe and the world.



Maria Miguel Oliveira da Silva and Jorge Morais Carvalho wrote a chapter on "Consumer Protection in the Fashion Industry from an EU Perspective" in The Handbook of Fashion Law, co-edited by Eleonora Rosati and Irene Calboli. The book can be ordered [here](#).

## PARTICIPATION IN CONFERENCE

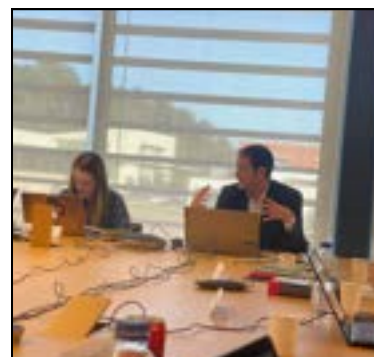
NOVA Consumer Lab researcher Jorge Morais Carvalho took part in the conference celebrating the 35th anniversary of ACRA - Associação de Consumidores da Região dos Açores, which took place in Ponta Delgada on 12 December.



# NOVA CONSUMER LAB NEWSLETTER

## PARTICIPATION IN CONFERENCE

Jorge Morais Carvalho attended the International Conference on Private Law and Sustainability, organised by Marta Santos Silva, at the Escola de Direito da Universidade do Minho on 19 and 20 December. The presentation was about "The (Un)Sustainability of the Sale of Goods in Directive (EU) 2019/771", based on an article with the same title written with Maria Miguel Oliveira da Silva.



## Interview: NCL members edition

In the December newsletter we interviewed our researchers!

### What piece of advice would you offer consumers while christmas shopping?

My main advice to consumers would be to consume less, to buy fewer things. For instance, instead of two gifts, only buy one, but of higher quality, more durable. I would also advise investing in things that are sustainable, durable and repairable. In terms of commercial practices, I think that it is very important to be familiar with prices so that no one gets tricked by supposed promotions. This way, it is possible to compare prices and assess more accurately whether the promotions are real. The time of purchase may also be relevant. This might involve buying in advance or waiting until after Christmas to take advantage of later price reductions. Making lists of what to buy can also be important to avoid impulsive shopping.

Jorge Morais Carvalho

A piece of advice I always like to share—and personally follow—is to make all necessary Christmas purchases well in advance. For instance, I typically buy all gifts in October or November. This approach allows for thoughtful and deliberate consumer contracts, avoids contributing to the holiday rush, and enables me to fully enjoy the festive season in December.

Maria Miguel Oliveira da Silva

I think Christmas is not a particularly challenging period (differently from sale seasons like Black Friday). When buying presents, it is however useful to remember that the mandatory right to withdraw is limited to online contexts and that voluntary rights to withdraw may be subject to various conditions: if you are not sure you got the perfect gift, check how it can be changed.

Fabrizio Esposito



# NOVA CONSUMER LAB NEWSLETTER

## Interview: NCL members edition

In the December newsletter we interviewed our researchers!

### What piece of advice would you offer consumers while christmas shopping?

My advice is not good for consumption, but here it goes: Do and be, instead of buying.

Paula Ribeiro Alves

Make conscious purchases! Christmas time encourages impulsive purchases and excessive spending of money, when that is not the focus! The value is not in the price of the gift, but in the effort we put into it :) Happy Christmas!

Leonor Gomes Martins

When shopping in stores during the Christmas season, it is crucial to always check the return policy of each shop. Unlike online shopping, physical stores are not legally required to establish a return period or accept returns if the consumer decides they no longer want the product (a different case would be, of course, in case of a lack of conformity). The return periods offered by stores are complementary, and each shop can set its own timeframe for this purpose.

For online shopping, my primary advice is to always verify that you are browsing the official website of the retailer you intend to purchase from, to ensure its legitimacy. Cybersecurity is increasingly important, so always look for signs that the website is secure, such as a standard URL and reasonable prices for the products (if the prices seem unusually low, it could be a red flag).

Leonor Gambôa Machado

When Christmas shopping, carefully review all product details and verify the authenticity of the seller, especially online. Watch out for phishing schemes where fake websites mimic official brands to sell counterfeit items. Always check website URLs and read reviews to ensure you're buying from a trusted source.

Amanda Costa Novaes

When Christmas shopping, technology can be your best ally. Price comparison websites and apps allow you to find the best deals without spending hours visiting different stores. Shopping apps with wishlist features can also help you track items and receive notifications when they go on sale or become available in a specific store.

Tiago Ribeiro Longa

Even though it's Christmas, it's important to pay attention to what seems too good to be true. Scams, fraud and disguised discounts can turn out to be a real Grinch, so I recommend that consumers remain vigilant and consult all the necessary information.

Guilherme Oliveira Costa

### What do you hope to see in Consumer Law for 2025?

2025 will be a very important year for consumer law in the Member States of the European Union, as many directives are in the process of being transposed. My main wish will therefore be that the transposition, especially into Portuguese law, is done in a rigorous and balanced way, with clear rules that are as objective as possible and allow for an effective application in practice.

Jorge Morais Carvalho

I am really concerned with digital addiction. I think the existing law could be used to address the problem. So I asked Santa to make sure that someone takes some serious action about it. He has not answered yet.

Fabrizio Esposito

A transposition of the Distance Financial Services Directive that is not as bad as the EU diploma to be transposed.

Paula Ribeiro Alves

During this year, I came across the absence of specific legislation in the European Union for games and applications, which seems to me to be a big gap given the global paradigm. I hope that 2025 bring us more regulation of these topics.

Leonor Gomes Martins



# NOVA CONSUMER LAB NEWSLETTER

## Interview: NCL members edition

In the December newsletter we interviewed our researchers!

### What do you hope to see in Consumer Law for 2025?

I hope to see new legislation that strikes a balance between product safety, sustainability, and the feasibility of measures for businesses. A law is truly effective and beneficial only if it is enforceable and efficient. Additionally, it should consider the evolving landscape of consumer rights and technological advancements, ensuring that both consumers and businesses can adapt to new challenges and opportunities. This holistic approach could hopefully help create a fair and dynamic marketplace for all involved.

Leonor Gambôa Machado

In 2025, I hope to see consumer law focusing on increased education and awareness of consumer rights, promoting transparency, and ensuring accessibility and fairness for consumers worldwide.

Amanda Costa Novaes

In 2025, I expect consumer protection in the digital environment to increase, particularly against algorithmic manipulation. Algorithms on social media platforms or gaming can encourage addictive behavior or promote biased, harmful recommendations, shaping consumers' decisions in ways they often don't even notice.

Tiago Ribeiro Longa

I hope to see Consumer Law continue to evolve exponentially, ensuring robust protection for all parties involved in consumer contracts and the production of goods. I also envision a stronger alignment with sustainability ideals. Furthermore, I would like to see Consumer Law place greater emphasis on the "S" in "ESG" (Environmental, Social, and Governance), complementing the commendable progress already made in addressing the "E."

Maria Miguel Oliveira da Silva

I'm very curious to see how Portuguese and European case-law will evolve in relation to class actions and actions for damages in both consumer law and competition law, especially in terms of demonstrating and calculating possible damages

Guilherme Oliveira Costa

## BLOG POSTS



# NOVA CONSUMER LAB NEWSLETTER

## NOVA CONSUMER PODCAST



# NOVA CONSUMER LAB NEWSLETTER

## CONSUMER LAW NEWS



### CJEU in Guldbrev (C-379/23) - 5 December - [Link](#).

Article 2(c), (d) and (i) and Article 3(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as meaning that the valuation service for goods provided by a trader to a consumer before the purchase of those goods from that consumer, which makes the purchase subject to acceptance of the price determined following that valuation, constitutes, together with that purchase, a 'product' within the meaning of those provisions, with the result that practices directly connected with the promotion of that product to consumers come within the scope of that directive.



### Judgement of the Guimarães Court of Appeal - 5 December (Rapporteur: Paulo Reis) - [Link](#)

The court dismisses the request for annulment of an award issue by a consumer arbitration centre (CNIACC).



### CJEU in Kutxabank(C-300/23) - 12 December - [Link](#).

1. Article 4(2) and Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that the requirement of transparency resulting from those provisions is complied with, when a mortgage loan agreement is concluded as regards the term of that agreement providing for the periodic adjustment of the interest rate in relation to the value of an official index established by an administrative act, which contains the definition of that index, merely because that act and the previous values of that index were published in the official journal of the relevant Member State, therefore without the lender itself having to inform the consumer about the definition of that index and its previous trend, even if, because of the method of calculating that index, the latter corresponds not to a remunerative interest rate, but to an annual percentage rate of charge (APRC), provided that, as a result of their publication, those elements are sufficiently accessible for an average consumer as a result of the indications given for that purpose by that seller or supplier. In the absence of such indications, it is for the seller or supplier directly to provide a complete definition of that index and any relevant information, in particular in respect of a possible warning from the authority which established that index as regards the index's particular features and their consequences which may be regarded as important for the consumer in order to assess correctly the economic consequences of concluding the mortgage loan agreement proposed to him or her. In any event, it is for the seller or supplier to provide the consumer with all the information that the applicable national legislation requires to be provided at the time when the agreement is concluded.

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## CONSUMER LAW NEWS

CJEU in Kutxabank(C-300/23) - 12 December - Link.

2. Article 3(1) of Directive 93/13 must be interpreted as meaning that, in order to assess the possible unfairness of a term in a variable-rate mortgage loan agreement providing for periodic adjustment of the interest rate in relation to the value of an official index, it is of relevance that that term refers directly and simply to that index, even though it follows from the information in the administrative act which established that index that, because of the particular features resulting from the method of calculating it, it would be necessary to apply a negative differential in order to align the annual percentage rate of charge (APRC) of the transaction concerned with the market APRC, provided that the seller or supplier did not inform the consumer of that information and provided that that information was not sufficiently accessible for an average consumer.

3. Article 3(1) of Directive 93/13 must be interpreted as meaning that, in the event of the use, in a term providing for the periodic adjustment of the interest rate of a mortgage loan agreement, of a reference index established on the basis of the annual percentage rates of charge (APRCs) applicable to the agreements taken into consideration for the calculation of the successive values of that index, the fact that those APRCs contain elements arising from terms which may subsequently be found to be unfair does not mean that the term adjusting the interest rate of the relevant agreement must be regarded as unfair and therefore unenforceable against the consumer.



4. Article 3(1) of Directive 93/13 must be interpreted as meaning that it cannot be presumed that the seller or supplier is acting in good faith in the event of use, in a term providing for the periodic adjustment of the interest rate of a mortgage loan agreement, of a reference index merely because it is an official index established by an administrative authority and used by the public authorities. The assessment of the possible unfairness of such a term must be carried out based on the particular circumstances of the case, by taking into consideration, inter alia, a failure to comply with the requirement of transparency, and by comparing the method of calculating the rate of ordinary interest provided for by that term and the actual sum resulting from that rate with the methods of calculation normally used and, inter alia, the interest rates applied on the market on the date on which the relevant loan agreement was concluded for a loan of a comparable sum and duration to those of that agreement.

5. Article 3(1) of Directive 93/13 must be interpreted as meaning that, in order to assess the possible unfairness of a term in a variable-rate mortgage loan agreement providing for the periodic adjustment of the interest rate in relation to the value of a particular reference index, it is relevant to compare the method of calculating the rate of ordinary interest provided for in that term and the actual sum resulting from that rate with the methods of calculation generally used and, inter alia, the interest rates applied on the market at the date of conclusion of that agreement for a loan of a comparable sum and duration to those of that agreement. Other aspects of the method for calculating the contractual interest rate or the reference index may be relevant if they are capable of creating an imbalance to the detriment of the consumer.

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## CONSUMER LAW NEWS

[CJEU in Kutxabank\(C-300/23\) - 12 December - Link.](#)

6. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, in the event that, in principle, a variable-rate mortgage loan agreement cannot continue to exist without the term providing for a periodic adjustment of the interest rate in relation to the value of a particular reference index, which has been found to be unfair, but where annulment of that agreement in its entirety would expose the consumer to particularly unfavourable consequences, those provisions do not preclude the national court from replacing that term with a supplementary provision of national law, provided that that supplementary provision has a scope equivalent to that of the term the substitution of which is envisaged. However, that court cannot revise that term by adding to it an element capable of remedying the imbalance which that term presents to the detriment of the consumer.

7. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, if a mortgage loan agreement cannot continue to exist without a term which has been found to be unfair, those provisions preclude the application of a rule of national law under which the seller or supplier would be entitled to obtain repayment of the whole of the sum lent plus interest calculated at the statutory rate from the date on which that sum was made available to the consumer.

[CJEU in Ford Italia \(C-157/23\) - 19 December - Link.](#)

Article 3(1) of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted as meaning that the supplier of a defective product must be considered to be a 'person who ... presents him[- or her]self as ... [a] producer' of that product, within the meaning of that provision, where that supplier has not physically put his or her name, trade mark or other distinguishing feature on the product, but the trade mark which the producer has put on that product is the same, on the one hand, as the name of the supplier or a distinctive element thereof, and, on the other hand, as the name of the producer.

## FEATURED WEBPAGE OF THE MONTH

[This month we highlight the page \[consumo.essencial\]\(#\), run by Marta Santos Silva on Instagram. There, the author tries to advise her followers on 'what you need to have in order to be'. More information \[here\]\(#\).](#)