



Autoridade de Segurança Alimentar e Económica

“SYMPOSIUM ON INNOVATION, VARIETY AND COMPETITION IN CONSUMER GOODS “

17th September 2015

ASAE
FOOD SAFETY AND ECONOMIC
AUTHORITY

ASAE

LEGAL NATURE

- Central Public Administration Service, under the superintendence and guidance of the Ministry of Economy
 - The National Authority responsible for law enforcement on food safety and economic activities
 - The National Authority in charge of the official food control system
 - Responsible for risk assessment and risk communication on the food chain
 - Criminal Police Body
- Ensure the enforcement of market rules in Portugal, in order to guarantee the principle of fair competition and the pursuit of consumers' interests.

LEGAL NATURE

ASAE isn't the Portuguese Competition Authority, which is also under the superintendence of the Ministry of Economy

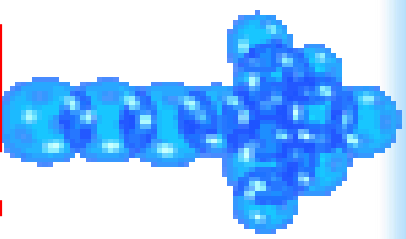
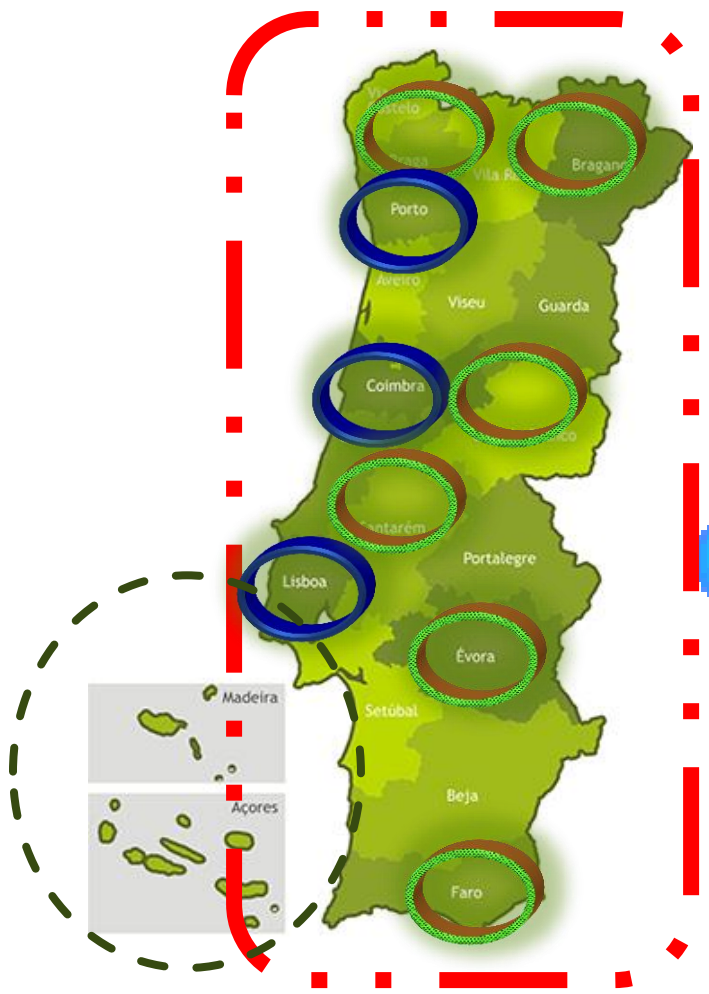


AUTORIDADE DA
CONCORRÊNCIA



Ensure the enforcement of competition rules in Portugal, in order to guarantee the principles of an open market economy and free competition.

TERRITORIAL LOCATION



ASAE

CENTRAL CONTROL SERVICES



- National Control and Enforcement Unit
- National Information and Criminal Investigation Unit
- Department of Administration and Resources
- Department of Law Enforcement and Infringements

COMPETENCIES AND RESPONSIBILITIES

- ➔ **Diversity of matters (more than 1 000 laws)**
- ➔ **Very wide horizontal scope, responsible for the enforcement on food, non food and services laws**
- ➔ **Cooperation with other specialized entities responsible for regulation or standardization matters**

COMPETENCIES ON FOOD SAFETY

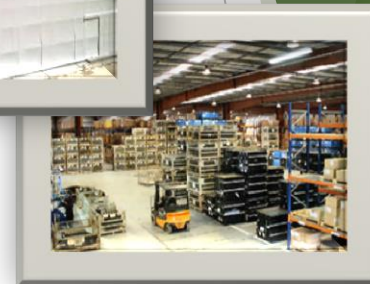
- ➔ Alcoholic beverages and wines
- ➔ Fish, meat and eggs
- ➔ Oil and vegetable oils
- ➔ Restaurants and cafes
- ➔ Hygiene of foodstuffs
- ➔ Feed
- ➔ Labelling of foodstuffs
- ➔ Babies' food
- ➔ Horticultural
- ➔ Materials in contact with foodstuffs

SURVEILLANCE AND INVESTIGATION IN ALL THE CHAIN PRODUCT - FOOD SAFETY

Production



Storage



Retail



COMPETENCIES ON NON FOOD AND SERVICES

- Individual restrictive trade practices
- Tourism
- Industrial and intellectual property
- Toys
- Safety of products
- Sales and promotions
- Illegal gambling
- Sports facilities
- Articles of precious metals
- Construction products
- Pricing and Complaints book

PREVENTIVE ACTION

ASAE cooperates, spreading of the legislation related to matters in his scope of action, through:

- Meetings with business associations and economic operators
- Seminars, events and various training activities
- In the acts of supervision and inspection
- Spreading the results of ASAE's enforcement activity

ASAE executes Official and Control Plans and Programs, such as:

- Official Plans and Programs
- Coordinated Control Plans of Fish and Honey (Food Fraud)
- Market Surveillance Program (Non-food sector)

REPRESSIVE ACTION

ASAE's core nature as an enforcement body, is mainly on the repressive action, that can be a proactive or a reactive one:

- Proactive action based on priorities defined in the Operational Planning
- Reactive action on the basis of complaints

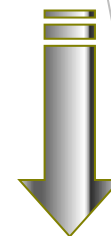
LEGAL PROCEDURES

Criminal infringements

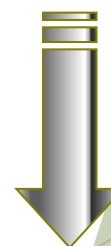


Prosecution of cases

ASAE



Public Prosecutor



COURT

NATIONAL LAW

Decree Law n° 28/84
Decree Law n° 213/2004

Penal Code

Interim Measures - With the prior approval of the *Public Prosecutor*:

- The seizure and the immediate withdrawal of the product from the market;
- Suspension of activity or temporary closure of the establishment

LEGAL PROCEDURES

Non-criminal infringements

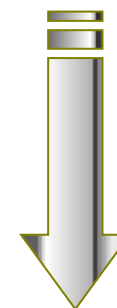


Prosecution of cases

ASAE

NATIONAL LAW

Laws and Decree Laws



Fines

Administrative Sanctions

Interim measures:

- Send a notification to the business operator ordering to withdrawal the product from the market;
- When necessary, the seizure and the immediate withdrawal of the product from the market;
- Suspension of activity or temporary closure of the establishment

LEGAL INSTRUMENTS TO ENSURE THE COMPETITION IN CONSUMER GOODS

LEGAL INSTRUMENTS



Counterfeiting, imitation and illegal use of brand (crime)



Food fraude (crime)



Individual restrictive trade practices



Unfair competition



Unfair commercial practices

COUNTERFEITING, IMITATION AND ILLEGAL USE OF BRAND

Article 323° of the Industrial Property Code

- Total or partial reproduction of brand
- Total or partial imitation brand
- Use counterfeit brands
- Illegal use of designated origin or geographical indication



3 years



360 days

Most affected sectors:

- Computer 39%
- Audiovisual 16%
- Textiles 10/16%
- Automobile parts 10%
- Sport and leisure 7%

FOOD FRAUD

Article 23° of Decree Law nº 28/84

Food Fraud is considered an economic criminal infringement related with the deception of the consumers.



1 year



100 days



Top 10 FOOD FRAUD 2014 – 2015

Product	Infringement
OLIVE OIL	The usage of another oil
Precooked meat and fish based products	Substitution of species
Margarines	The usage of another fat
Fruits/vegetables (fresh)	Change of origin
Cheese	Adulteration
Wines	Adulteration / Counterfeit
Meat	Substitution of species
Fish	Substitution of species
Cod fish	Substitution of species
Food Supplements	Substitution/ingredients Adulteration

INDIVIDUAL RESTRICTIVE TRADE PRACTICES

Decree-Law
nº370/93

Decree-Law nº
166/2013, 27 of
decembre



SCOPES

- ➔ Clarify the application of the legal framework regarding individual restrictive trade practices
- ➔ Transparency in trade relations
- ➔ Balance of the negotiation positions between companies
- ➔ Sufficiently deter its noncompliance

Decree-Law nº166/2013 - Main changes

I) It applies only to companies established in national territory

II) Application to goods and services, in the food and non-food area (except, for example, buying and selling goods and services in the sectors of financial, postal, transport, electronic communications and energy)

III) Better definition of “selling below cost”, including deferred discounts being considered as part of the retail price

IV) Better definition of sales refusals and identification of reasons that can be accepted for that purpose

V) Better definition of abusive commercial practices (some practices have been explicitly identified as abusive)

Decree-Law n°166/2013 - Main changes

VI) Mandatory written agreements

VII) Much higher fines (that can reach up to 2.5M€) so that they become effectively dissuasive

VIII) Interim measures and periodic penalty payments

IX) Enforcement, proceedings and case decision has passed to the exclusive jurisdiction of the ASAE

X) Also involves a concern for orienting towards self-regulation, as a complement to legislation, in order to improve better results on monitoring and conflict management

FORBIDDEN INDIVIDUAL RESTRICTIVE TRADE PRACTICES

Application of discriminatory prices or sales conditions- art. 3º

Lack of transparency in pricing policies and sales conditions - art. 4º

Selling below cost- art. 5º

Refusals to sell goods or provision of services- art. 6º

Abusive commercial practices- art. 7º

UNFAIR COMPETITION

Article 331° of the Industrial Property Code

Act :

- Contrary to honest norms and uses of any branch of economic activity,
- That create confusion with the business, products or services of competitors,
- Regardless of the form used.



ADDRESSEE	FINES (Minimum and maximum)
INDIVIDUALS	€ 750 - € 7 500
COMPANY /ENTREPRISE	€ 3 000 - € 30 000



UNFAIR COMMERCIAL PRACTICES

Decree-Law nº57/2008 (Directive 2005/29/CE)

- Applies to unfair commercial practices, including unfair advertising, which directly harm the economic interests of consumers and indirectly the economic interests of legitimate competitors.
- The competitors who have a legitimate interest in opposing unfair trade practices prohibited under the decree-law, may propose an injunction to prevent, correct or terminate such practices



ADDRESSEE	FINES (Minimum and maximum)
INDIVIDUALS	€ 250 - € 3 750
COMPANY /ENTREPRISE	€ 3 000 - € 44 891



ENFORCEMENT RESULTS

1º semestre 2015

ENFORCEMENT RESULTS - 1º semester 2015

OPERACIONAL ACTIVITY		
Supervised operators		19 914
Suspended activities		303
Criminal cases		539
Non-criminal cases		2 685
Detentions		214
Default rate		19%
Seizures	kg	426.004
	lt	391.765
	unities	1.031.180
	€	6.402.519

Nº of Inspectors- 224

INDIVIDUAL RESTRICTIVE TRADE PRACTICES

ENFORCEMENT RESULTS		
<i>Nº of supervised operators</i>	<i>Cases</i>	<i>Decisions</i>
256	81	10



ENFORCEMENT RESULTS

Decree-Law n°166/2013, 27th of december

INFRINGEMENTS		Prevision
Failure to produce price tables with the conditions of sale, on request	4	art. 4°/1
Non written provisions on conditions of sale	3	art. 4°/3
Selling below cost	70	art. 5°
Refusals to sell goods or provision of services	3	art. 6°
Failure to provide or providing false information, inaccurate or incomplete to the supervisory authority	1	art. 9°
TOTAL	81	

Thank you for your attention!

Helena Sanches
Head of Legal Services
mhsanches@asae.pt