

PRESIDENCY OF THE COUNCIL OF MINISTERS
Decree-Law No. 3/2022
of 4 January

Summary: Defines the term "leather" and establishes the conditions of its use, as a name of the composition of products placed on the national market.

The marketing of leather products has been assuming an increasing importance at European Union level. Today the tannery industry represents a strategic segment of the economy, which combines tradition with continuous innovation.

The industrial activity of these economic operators involves transforming animal skins into a marketable product, based on leather. The entire manufacturing process is complex, time-consuming, going through several phases of skin treatment until you can obtain a product of recognized quality.

The growing diversity of products that use leather as a raw material is increasingly confronted with the availability on the market of synthetic products which, using inaccurate and abusive names, lead to misinterpretations concerning its composition, misrepresenting competition and distorting the information that reaches consumers.

The misleading uses of widely disseminated terms, as a way of approaching to the unique characteristics of leather, represent damages to consumers and industry, affecting their competitiveness.

Consumers' access to a correct information about the products they purchase is imperative so that they can make their purchase options upon substantiated criteria upon the actual characteristics of the products. To the manufacturers should also be guaranteed the legal means that allow them to show the authenticity of the products which they directly or indirectly place on the market.

Thus, this Decree-Law creates a suitable definition of the term 'leather', by specifying all the characteristics and the technical standards to be observed and laying down the conditions under which that term (or its derivatives) may be used by producers and manufacturers. This contributes to fair competition between economic operators, with a focus on informed and informed choice by consumers.

Despite the absence of a suitable definition of the term 'leather' at the European Union level, several legislative acts of other Member States have followed and complied with the definition laid down in Directive 94/11/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the legislative, regulatory and administrative provisions of the Member States concerning the labelling of materials used in the main components of footwear for sale to the consumer. Although Directive 94/11/EC, transposed into national law by Decree-Law No 26/96 of 23 March, only concerns footwear articles, introduces a definition of 'leather' that can be applied to other products than footwear.

Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 about unfair commercial practices of companies vis-à-vis consumers in the internal market, and in particular the European Commission Guidance Guide, 2016, also provides for the protection of the authenticity of leather, referring to the use of terms such as 'textile leather' and 'eco-leather' as capable of setting up a misleading practice.

In this spirit of protection of a material authenticity with a strong industrial presence and in view of protecting consumers, in line with the legislation on the subject in other

Member States, it is necessary to define precisely the conditions of use of names identifying the raw materials used in products made-up of leather.

This Decree-Law was notified at its design stage, in accordance with Directive (EU) 2015/1535, the European Parliament and the Council of 9 September 2015 regarding an information procedure in the field of technical regulations and rules relating to information society services, transposed into domestic law by Decree-Law No 30/2020, of June 29.

The own government agencies of the Autonomous Region of the Azores were consulted. The hearing of the National Consumer Council and the own government bodies of the Autonomous Region of Madeira was promoted.

Thus:

Pursuant to Article 198(1) (a) of the Constitution, the Government decrees the following:

Article 1º

Object and scope

1 – This Decree-Law establishes the definition and use of the term 'leather' and its derivatives or synonyms, as a name of the composition of the products manufactured and placed on the national market, to be considered in the labelling, marking and advertising of materials, promoting a correct information to the consumers.

2 — The provisions of this decree-law do not apply to products covered by Decree-Law No. 26/96 of 23 March

Article 2º

Definitions

For the purposes of this Decree-Law, it is understood by:

- (a) 'Natural grain' means skin which retains its epidermis of origin as it is presented when the epidermis is removed and without any film being removed by polishing, deflowering or fendiment;
- (b) 'Tanned leather and skin' means a product obtained from animal skin which retains its original fibrous structure more or less intact and which has been tanned to become imputable. The coat or wool may or may not have been disposed of. If the leather or tanned skin has a coating surface or a counter-glued surface, these surface layers shall not have more than 0,15 mm thick, whatever the manner which they are used to the skin. 'Tanned' is also considered to be skins that have been divided (sawn) into layers or segments, whether the split has occurred before or after tanning. Whenever tanned skin has lost its natural structure, because it has been mechanically or chemically disintegrated into fibrous particles, small particles or dust, and then reconstituted, after combination or not with a binder, in leaves or other forms, it cannot be considered leather or tanned skin;
- (c) 'coated leather' means a leather where the thickness of the coating or counter-take-off surface does not exceed one third of the total thickness of the product and exceeds 0,15 mm;
- (d) 'Leather Croute', skin with complete removal of the epidermis.

Article 3º

Conditions of use

1 – The names of the previous article may only be used in products which fulfil all the characteristics defined therein, as well as in the products manufactured with them.

2 – It is prohibited to sell, market or advertise products using the terms 'leather', 'skin', 'tanned skin', 'coated leather', as well as the other terms defined in the preceding article, its derivatives or synonyms, as a mean of naming any other materials which do not comply with the characteristics defined in the preceding article, either as a noun or as an adjective, even if entered as prefixes or suffixes in other words, regardless of the language used.

3 – The violation of the provisions of this Article sets up a misleading commercial practice, in accordance with the provisions of Decree-Law No. 57/2008 of March 26, in its current writing.

Article 4º

Compliance verification and mutual recognition

1 – The verification of the conformity of the products with article 2 shall be carried out in accordance with EN/ISO 17131 and EN 15987 in its latest version.

2 – The provisions of this Decree-Law shall not prejudice the free movement of products which are legally produced or marketed in the other Member States of the European Union or which are legally produced in the countries of the European Free Trade Association (EFTA), which are Contracting Parties to the Agreement on the European Economic Area, including products legally manufactured or marketed in Turkey, applying them the provisions of Regulation (EU) 2019/515 of the European Parliament and the Council of 19 March 2019 concerning the mutual recognition of goods legally marketed in another Member State, enforced after 19 April 2020.

Article 5º

Surveillance

1 – Without prejudice to the powers conferred by law on other entities, the review of compliance with this decree-law shall be the responsibility of the Food and Economic Safety Authority (ASAE) as a market surveillance authority.

2 – ASAE may request the assistance of any entities whenever necessary for the performance of their duties.

Article 6

Precautionary measures

The supervisory authority may determine the application of precautionary measures provided for in the Legal Regime of Economic Administrative Offences, approved by Decree-Law No. 9/2021 of January 29 (RJCE).

Article 7º

Instruction and decision

1 – The instruction of the offence proceedings shall be the responsibility of the ASAE, to whom the news reports obtained by other entities must be sent.

2 – The imposition of fines and ancillary penalties shall be the responsibility of the Inspector General of the ASAE

Article 8º

Administrative Offences

- 1 — Failure to comply with Article 3(1) and (2) constitutes a serious economic offence punishable under the RJCE
- 2 — Trial and negligence are punishable under the RJCE.

Article 9º

Ancillary penalties

Without prejudice to the civil and criminal liability to which it takes place, where the seriousness of the offence and the fault of the agent so justifies, the competent authority, at the same time as the fine, may determine the application of the ancillary penalties under the RJCE.

Article 10º

Distribution of the proceeds of fines

The proceeds of the fines imposed under Article 8 shall be distributed in accordance with the RJCE.

Article 11º

Competent authority

It is for IAPMEI — Agency for Competitiveness and Innovation, I.P., to monitor the implementation and implementation of this Decree-Law, which is responsible for proposing the necessary measures to achieve its aims, including those intended to ensure the link with the European Commission and with other Member States of the European Union in this area.

Article 12º

Autonomous Regions

- 1 — The acts and procedures necessary for the implementation of this Decree-Law in the Autonomous Regions of the Azores and Madeira are the responsibility of the entities of their regional administrations with the tasks and competences in the matters concerned
- 2 — The proceeds resulting from the imposition of the respective fines by the Autonomous Regions constitute its own revenue.

Article 13º

Transitional standard

Products which at the date of entry into force of this Decree-Law are placed on the market and do not meet the definitions and conditions of use provided for in Articles 2 and 3, respectively, may continue to be marketed until any stocks are disposed of, without subjecting the procedure until 31 December 2022.

Article 14º
Effect production

This decree-law shall take effect on 1 January 2022.

It was seen and approved by the Council of Ministers of December 2, 2021. — Pedro Gramaxo de Carvalho Siza Vieira — Pedro Gramaxo de Carvalho Siza Vieira — Ana Paula Baptista Grade Zacarias.

Promulgated on December 16, 2021.

Publishes it.

The President of the Republic, MARCELO REBELO DE SOUSA.

Endorsed on 23 December 2021.

The Prime Minister, António Luís Santos da Costa