



## European Consumer Centres E-commerce report 2014

Part 1  
Highlights for traders - Checklist and test yourself tool



This publication is available on the websites of the ECCs.  
(Further information can be found in Annex II)

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## European Consumer Centres E-commerce report 2014

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The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports referred to and on the data results and questionnaires answers submitted to the working group by all project participants.

# Foreword

This report from the European Consumer Centres (ECC-Net) about e-commerce is divided into two parts. Part 1 is aimed at guiding businesses in consumer legislation in relation to cross-border e-commerce and to increase the cooperation between ECC-Net and business organisations.

In part 2, our aim is to guide consumers in relation to consumer rights in cross-border e-commerce and increase consumer confidence in the European Internal Market.

## The European Consumer Centre Network

The European Consumer Centre Network (ECC-Net) consists of 30 centres based in each EU Member State, Norway and Iceland. It is co-financed by the EU (Consumer Programme) and by each of the participating states.

The aim of the Network is to increase consumer confidence in the European Internal Market by providing consumers with information on their rights under European consumer legislation, and by giving advice and assistance in the resolution of their individual cross-border complaints.

## Background

ECC-Net deals with a large number of cross-border consumer complaints every year, and is therefore in a unique position to document problems that occur when shopping online within the EU. Among the 80 272 contacts from consumers, the ECCs dealt with 32 522 complaints, an increase of 9% compared to 2012.<sup>1</sup> In 2013, 66% of the complaints handled by ECC-Net related to online purchases, an increase by 6% compared to 2012.<sup>2</sup>

The European Consumer Centre in Sweden has led this project in close cooperation with the Centres in Denmark, Finland and Ireland, who formed the working group for this project.



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1 Press release, 19 February 2014, [http://europa.eu/rapid/press-release\\_IP-14-162\\_en.htm](http://europa.eu/rapid/press-release_IP-14-162_en.htm)

2 Infograph for 2012, [http://ec.europa.eu/consumers/ecc/ecc\\_infographic\\_en.htm](http://ec.europa.eu/consumers/ecc/ecc_infographic_en.htm)  
Infograph for 2013, [http://ec.europa.eu/consumers/ecc/infographic/02\\_14\\_infograph-eccnet\\_2013.pdf](http://ec.europa.eu/consumers/ecc/infographic/02_14_infograph-eccnet_2013.pdf)

# Introduction



## E-commerce

Cross-border e-commerce is a fast developing area. The Digital Agenda<sup>3</sup> for Europe has set out ambitious e-commerce targets for 2015 and for the more than 500 million citizens of the EU;

- 50% of EU-consumers buying online
- 20% buying online cross-border within the EU.

There are many advantages when selling products via cross-border e-commerce. Through the internet traders can, in one online marketing operation, easily reach consumers in many different countries and broaden their target group. However, it can be difficult for traders to know what to be aware of when trading cross-border.

Consumers are more and more seeking out the advantages offered by e-commerce, such as cheaper prices and wider choices, while businesses see e-commerce as an opportunity to reach more consumers and grow. According to a European market study on e-commerce, 66% of online shoppers reported that they are turning to e-commerce for lower prices, 50% to save time, and 47% for reasons related to the varied choices of goods and services.<sup>4</sup>

## Help to traders in cross-border e-commerce

This report is intended to be a proactive response to the challenges of keeping up to date with consumer legislation for traders engaging in online transactions. A major change is limited to the implementation of the Consumer Rights Directive (CRD) which has clarified a number of obligations for online trade.

As a trader, you are responsible for everything displayed on your website and for the correct execution of the contracts signed with your customers. It is essential to be fully aware of your obligations towards consumers. Following the rules and being service minded towards your consumers will always pay off in one way or another. Many consumers read feedback written by other consumers before shopping. Positive feedback often generates good business.

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<sup>3</sup> [http://ec.europa.eu/information\\_society/digital-agenda/index\\_en.htm](http://ec.europa.eu/information_society/digital-agenda/index_en.htm)

<sup>4</sup> Civic Consulting (2011). "Consumer market study on the functioning of e-commerce". This is based on a sample of frequent online shoppers. Frequent shoppers were defined as respondents who bought products online at least once a month.



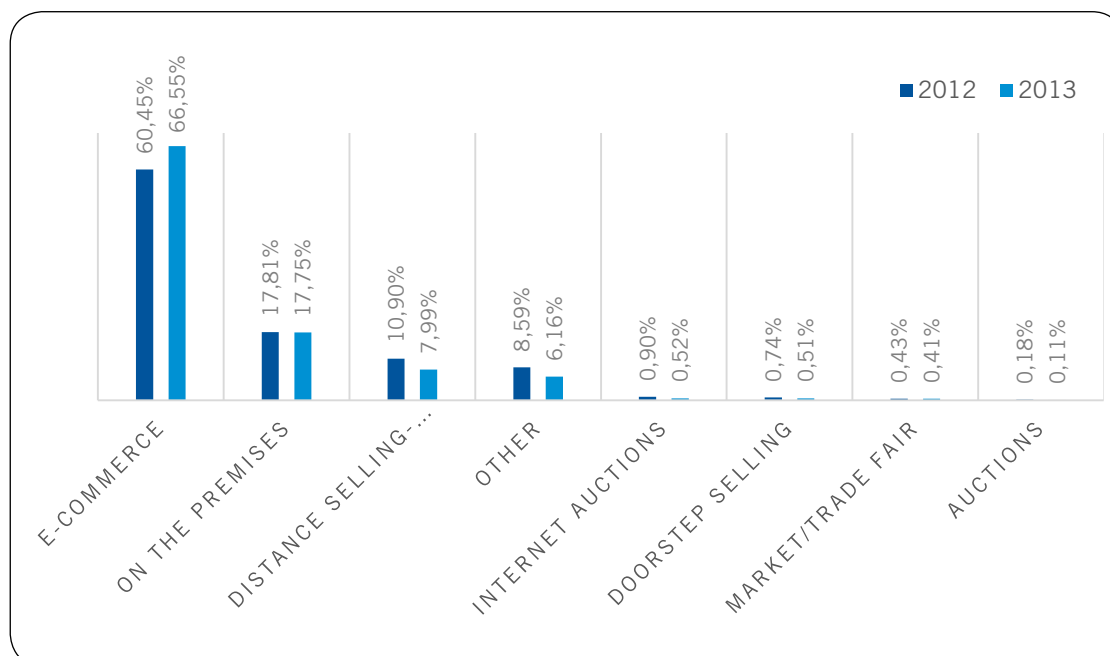


Figure 1. Complaints handled by the ECC-Net in 2012 and 2013, divided by selling method.

By using our knowledge and experience we aim to help traders and consumers to understand the relevant rules in the e-commerce so that disagreements may be solved before they escalate into formal disputes.

## Content of the report

We have put together a tool-kit to help traders learn more about consumer legislation and avoid complaints from consumers, and improve handling of complaints. It contains a checklist for traders with an overview of the most important rules and a test yourself quiz where you can test your knowledge on traders' obligations in the e-commerce area.

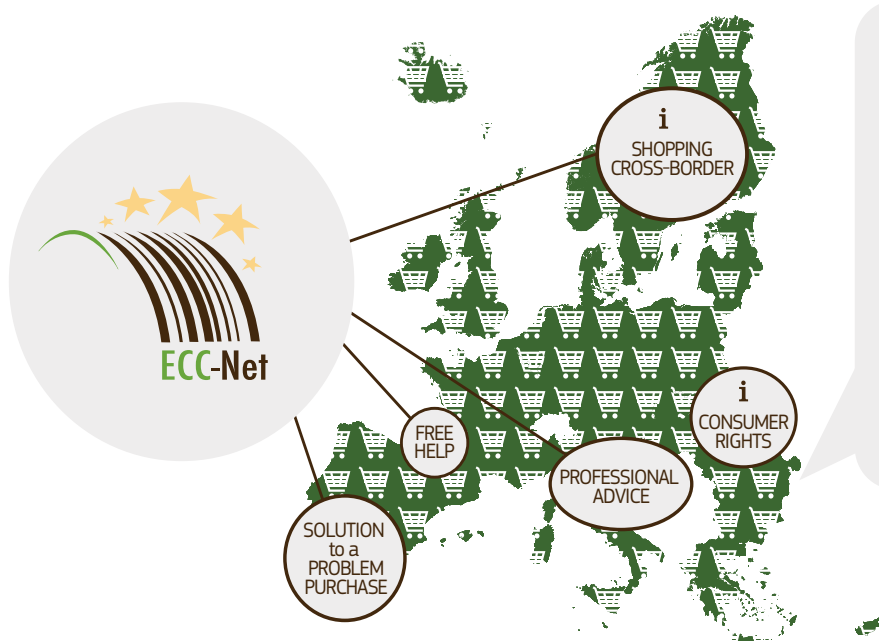




## ECCs HELPED MORE THAN 80.000 EU CONSUMERS WITH THEIR CROSS-BORDER PURCHASES IN 2013



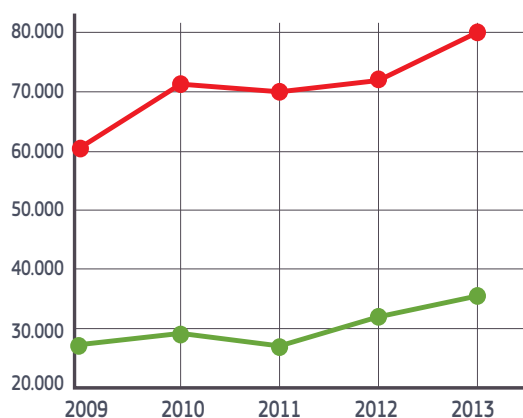
### ► WHAT DO ECCs DO?



- Provide information to consumers on EU rights when shopping in a different country of the network \*
- Help to find solutions if something goes wrong

\*ECC-Net covers all 28 EU Member States + Norway and Iceland.

### ► HOW MANY CONSUMERS USED THEM?

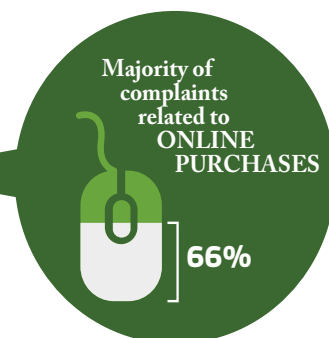


**80.272**  
**CONTACTS**

**+32,1 %**  
compared to 2009

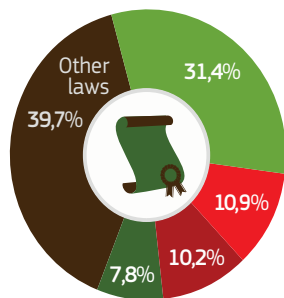
**32.522**  
**COMPLAINTS**

**+17,8 %**  
compared to 2009



## ► IDENTITY CARD OF COMPLAINTS

### MAIN AREAS OF EU LAW BREACHES



- Distance contracts
- Nationals legislations
- Guarantees
- Air passenger rights

## ► TOP 10 AREAS OF COMPLAINTS

### 1 TRANSPORT

of which

**18,3%** air transport

**4,5%** car rental

- 2 HOUSEHOLD EQUIPMENT AND MAINTENANCE
- 3 RECREATIONAL, SPORTING AND CULTURAL SERVICES
- 4 TIME-SHARE PRODUCTS AND PACKAGE HOLIDAYS
- 5 HEALTH CARE RELATED EQUIPMENT AND PRODUCTS
- 6 AUDIO-VISUAL, PHOTOGRAPHY AND INFORMATION
- 7 TELECOMMUNICATION
- 8 CLOTHING AND FOOTWEAR
- 9 HOTELS AND RESTAURANTS
- 10 PERSONAL CARE GOODS AND SERVICES

## ► TOP 5 CAUSES OF COMPLAINTS



15,4%

No Delivery or  
cancellation of service

12,4%

Product / Service  
defective or delayed

10,0%

Product / Service not in  
conformity with order

8,6%

Cancellation of contract

5,0%

Supplementary charges

<http://ec.europa.eu/ecc-net>

Health and  
Consumers



# Checklist for traders

If you sell products or services to consumers through a website you must meet certain legal obligations. These rules apply whether you are a large established company or just starting out. It is important to know that some consumer rights are fully harmonised in the EU and therefore they are the same in all EU countries, irrespective of the transposition technique in each Member State. Other consumer rights may differ according to the country of residence of the consumer so you should be aware of any relevant national laws and the potential application of article 6(2) of Rome I regulation.<sup>1</sup>

Additionally, it should be indicated how traders shall inform consumers about choice of law clauses and what the implications are (e.g. higher standards of protection could apply. In some areas such as legal guarantees).

## These obligations include: <sup>2</sup>

### General requirements under consumer law

- Products or services must comply with the given description and be of a satisfactory standard.
- Descriptions of and details about the item or service must be true and accurate.
- If a product is faulty, consumers can request a repair, replacement, or refund under certain conditions up to, at least, twenty-four months from the date of purchase. (more in some Member States).

The seller is liable to the consumer for any lack of conformity which exists when the goods are delivered to the consumer and which arises within a period of, at least, two years from delivery. However, a lack of conformity cannot be established if, at the moment of the conclusion of the contract of sale, the consumer knew or could not reasonably have been unaware of the lack of conformity.

Any lack of conformity becoming apparent within six months of delivery will be presumed to have existed at the time of delivery unless proof to the contrary is furnished or this presumption is incompatible with the nature of the goods or the nature of the lack of conformity.<sup>3</sup> During the first 6 months after purchase the burden of proof is on the trader to demonstrate that a product is not faulty; whereas after 6 months have elapsed, it is up to consumers to prove that the product is not in conformity.

- The concept of legal guarantee relates to the legal protection of the purchaser in respect of defects in the goods acquired discussed above. This legal protection is rendered compulsory by the law and is not dependent upon the contract.

<sup>1</sup> REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 June 2008 on the law applicable to contractual obligations (Rome I) [http://www.cojef-project.eu/IMG/pdf/Rome\\_I\\_regulation.pdf](http://www.cojef-project.eu/IMG/pdf/Rome_I_regulation.pdf)

<sup>2</sup> Sources: The checklist is based on the checklist on p. 56 in "The European Online Marketplace – Consumer complaints 2010-2011, "Consumer Rights: 10 ways the new EU Consumer Rights Directive will give people stronger rights when they shop online", [http://europa.eu/rapid/press-release\\_MEMO-11-450\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-450_en.htm?locale=en). Directive 2011/83/EU on Consumer Rights. "The European Online Marketplace – Consumer complaints 2010-2011", [http://ec.europa.eu/consumers/ecc/docs/e-commerce-report-2012\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/e-commerce-report-2012_en.pdf) "Too good to be true? It probably is! – Unfair Commercial Practices and Unsolicited Goods". [http://www.konsumenteuropa.se/globalassets/sets/rapporter/too\\_good\\_to\\_be\\_true\\_it\\_probably\\_is\\_unfair\\_commercial\\_practices\\_and\\_unsolicited\\_goods.pdf](http://www.konsumenteuropa.se/globalassets/sets/rapporter/too_good_to_be_true_it_probably_is_unfair_commercial_practices_and_unsolicited_goods.pdf) Trading Standards [http://dshub.tradingstandards.gov.uk/sites/default/files/DSchecklist\\_ECRs\\_PDF.pdf](http://dshub.tradingstandards.gov.uk/sites/default/files/DSchecklist_ECRs_PDF.pdf)

<sup>3</sup> DIRECTIVE 1999/44/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees. All the Member States introduced this reversal of burden of proof in favour of the consumer in their national law. Three of them went further by extending the 6-months' duration to a longer period of presumption. In Portugal, the reversal of burden of proof is applicable throughout the whole duration of the legal warranty of 2 years. This will also be the case in France starting from March 18th 2016, the period of presumption will be extended to 24 months from the delivery of the good. For second hand goods the reversal of burden of proof period will remain 6 months. In Slovakia, the Consumer Protection Act 250/2007 extends the reversal of burden of proof period to 12 months.

- The concept of commercial guarantee relates to the willingness of one party, the guarantor, to assume liability for certain defects. It is defined as follows: "any additional undertaking given by a seller or producer, over and above the legal rules governing the sale of consumer goods, to reimburse the price paid, to exchange, repair or handle product in any way, in the case of non-conformity of the product with the contract".<sup>4</sup> Commercial guarantees are in addition to, and not in substitution for, consumers' statutory rights.

In addition to your obligations for faulty products under consumer law, specific rules apply to distance selling (where you take orders remotely from consumers, be it from your website, email, phone, or fax).

## **Distance selling in conformity with the EU Directive on Consumer Rights**

EU Directive 2011/83/EU<sup>5</sup> on consumer rights applies to distance contracts for goods and services when the trader is based in an EU country, Norway or Iceland.<sup>6</sup> Compliance with the Directive is obligatory for all EU traders.

### **Information requirements**

Prior to the contract being concluded, you must provide information about:

- Your business, including your business registration number, your full trading name and full contact details, such as the geographic address where your business is established and an e-mail.
- The main characteristics of the product or service.
- The order, e.g. the number of goods.
- The total price of the order, including taxes, fees, and delivery costs involved.
- The arrangements for payment, delivery, and performance.
- The time by which you undertake to deliver the goods or perform the service.
- The right of withdrawal and how the consumer exercises this right.
- The cost for the consumer for using the right of withdrawal, e.g. the cost for returning the goods if the goods, by their nature, cannot normally be returned by post.
- How to cancel the contract.
- When concluding a subscription, the minimum duration of the contract and information on how to terminate the contract.
- Details of any trade register (or similar organisation) in which you are registered, including the name of the register, your registration number or other reference.
- If your service is subject to an authorisation scheme, details of the relevant supervisory authority.
- If you are a member of a regulated profession, details of any professional body with which you are registered, any professional titles you hold within the EU-Member States in which the titles have been granted, how to access the professional rules and a short description of them.

You shall inform consumers about choice of law clauses and what the implications are (e.g. higher standards of protection could apply in some areas such as legal guarantees).

<sup>4</sup> [http://europa.eu/legislation\\_summaries/consumers/protection\\_of\\_consumers/l32022\\_en.htm](http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l32022_en.htm)

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

<sup>6</sup> Please note, that some type of contracts are excluded from the Directive's application, such as contracts for social services or gambling. Consult the extensive list in article 3.3 in Directive 2011/83/EU.

## Requirements for the conclusion of distance contracts

- The information stated above has to be clearly visible and accessible for the consumer. It has to be written in a clear and comprehensible language.
- If the order places the consumer under an obligation to pay, you have to ensure that the consumer explicitly acknowledges that the order implies an obligation to pay e.g. by requiring the consumer to click a button labelled 'confirm purchase', 'pay now' etc. If the consumer's express consent is not obtained they shall not be bound by the contract.
- You have to provide the consumer with a confirmation of the contract concluded. Any terms and conditions applicable to the contract must be made available to your customer in a way that allows them to store and reproduce them. This confirmation has to be provided on a durable medium within a reasonable time after the conclusion of the contract and at the latest upon delivery of the goods or before the performance of the service begins. You can send an e-mail to the consumer with this information.

## Cooling off

- The consumer has the right to withdraw from a distance contract (the so-called cooling-off period), within a period of 14 days counted from the date of the delivery of the goods or from the date of the conclusion of the contract, if it concerns services.<sup>7</sup>
- The trader must inform the consumer about the conditions, time limits and procedures for exercising their right to withdraw as well as providing the model withdrawal form set out in Annex I (B) of the Directive.
- If you have failed to inform the consumer about their right to withdrawal, the cooling off period shall expire 12 months from the end of the initial withdrawal period or 14 days from the moment the consumer receives the information if provided within those 12 months.
- This right can be exercised without any reason being given and you cannot charge the consumer any cost other than the cost for sending back the goods<sup>8</sup>, if you have not offered to collect the goods yourself.
- After the consumer has withdrawn from the contract, you must reimburse all payments from the consumer no later than 14 days from the date the consumer informed you of his decision to withdraw from the contract. If the contract concerns a purchase of goods, you have the right to postpone the repayment until you have received the goods back or until the consumer has supplied evidence of having sent back the goods.
- Unless you have offered to collect the goods, the consumer has 14 days to return the goods counted from the date he informed you about his decision to withdraw from the contract.
- The consumer is liable for any diminished value of the goods, if he or she has handled the goods in excess of what is necessary to establish the nature, characteristics and functioning of the goods. However, if you have failed to provide information about the right of withdrawal, the consumer is not liable for the diminished value of the goods.

There are exceptions to the right of withdrawal, e.g. plane tickets, package travels and car rental services etc.<sup>9</sup>

<sup>7</sup> Please note, that in some situations the right of cooling off does not apply. However, this is only exceptions and concerns for instance when the consumer has expressly agreed not to have a period of cooling off or when it concerns contracts of goods which expire rapidly. Consult the extensive list in article 16 in Directive 2011/83/EU.

<sup>8</sup> See ECC-Net report The European Online Marketplace Consumer complaints 2010-2011, page 25, Figure 4.1 Overview per country of cooling off period and the contractual party who covers the return costs.

<sup>9</sup> Art. 16 DIRECTIVE 2011/83/EU, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1>

## Delivery

- Unless you and the consumer have agreed otherwise, you have to deliver the goods to the consumer no later than 30 days from the date of conclusion of the contract.
- If you fail to deliver within the right time, the consumer can contact you and request delivery within an additional period of time unless the delivery of the product within the agreed timeframe was essential. In such a case the consumer should be entitled to terminate the contract immediately upon expiry of the initially agreed time limit.
- If you still have not delivered the goods, according to the consumer's request, the consumer is entitled to terminate the contract.
- If the contract is cancelled, you must reimburse all sums the consumer has paid during the contract, without undue delay.

## Passing of risk (responsibility for the transit of goods)

- You are held responsible for lost or damaged goods until they are physically delivered to the consumer, if your contract includes delivery.
- If it has been agreed that the consumer will arrange the transportation, the consumer is responsible for the goods directly upon delivery to the carrier.

## Premium rate customer services

If you operate a customer service helpline, you are not allowed to charge the consumer any more than the basic telephone rate. To comply with this provision you must use telephone numbers such as standard (geographic) numbers that are not subject to any special tariff regime.

## Payment

- Traders should provide safe, secure and variable payment methods. Usually payment by credit/debit card is safer for consumers.
- If you offer payment through a payment transaction intermediary ensure it is reliable.

## Additional payment

You are not allowed to charge the consumer any extra fees in addition to the price agreed, without his or her express consent. In particular you are not allowed to use pre-ticked boxes to offer and charge for additional goods/services.

You are also not allowed to charge consumers more for paying by credit card (or other means of payment) than what it actually costs you to offer such means of payment.

## Applicable law

It is important to be aware of any national rules in the consumer's jurisdiction which may be applicable to the contract. When it comes to cross border transactions, Regulation (EC) 593/2008 (Rome I)<sup>10</sup> determines which country's law is applicable to contractual obligations in a given situation.<sup>11</sup>

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<sup>10</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0593&from=EN>

<sup>11</sup> Rome I is not applicable in Denmark (it has not been implemented due to the Danish opt-out on judicial matters) and Denmark still use Regulation 80/934 to decide which law is applicable. Norway (the Norwegian Supreme Court has stated in several decisions that Norway should seek unity with EU law and therefore the same principle applies).

In consumer contracts, generally the law applicable is the law of the country where the consumer has his habitual residence provided you pursue your commercial activities in that country or direct your commercial activities to that country or to several countries including that country. You could be deemed to be directing your commercial activities to the consumer's country if, for instance your website provides information in the language of the consumer or allows the consumer to choose to pay in his own currency.

The following matters may constitute evidence that your commercial activities are directed to the consumer's country:<sup>12</sup>

- the international nature of the activity.
- mention of itineraries from other Member States for going to the place where the trader is established.
- use of a language or a currency other than the language or currency generally used in the Member State, in which the trader is established with the possibility of making and confirming the reservation in that other language.
- mention of telephone numbers with an international code.
- outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States.
- use of a top-level domain name other than that of the Member State in which the trader is established.
- mention of an international clientele composed of customers domiciled in various Member States.

Since the Regulation is based on the principle of freedom of choice, the law applicable to a contract can also be the law chosen by the parties. As the trader, you have the possibility to state in your terms and conditions, which law applies to the contract. Be aware that the law chosen by you only applies as long as it provides the same level of protection to the consumer as that of his country of habitual residence. In case of a complaint the consumer can refer to the law of the country of his residence, if it offers a higher level of protection.

If you direct your commercial activities to another country, it is therefore recommended that you have basic knowledge of that country's consumer legislation and consider how they affect you and your business.

## **Data protection**

Traders are obliged to protect their consumers' data. You will need a privacy statement if you collect personal data such as order forms, feedback forms etc. by using cookies or other tracking devices, or via users' IP or email addresses. You may need to register with your local data protection commissioner as a data controller.

## **Marketing and unfair commercial practices**

EU legislation provides for a black list of unfair practices which are banned in all circumstances while other commercial practices are subject to a case-by-case unfairness test.

- All information you provide to consumers must be true. You are not allowed to deceive or mislead consumers in any way either by means of express statement or by omission of material information.
- Marketing material and information which the consumer needs in order to make a transactional decision, must be clearly visible to him.
- You are not allowed to state that a product is available for a very limited time, if such limitation does not actually apply.
- Neither are you allowed to describe products as "free" or "without charge" if the consumer is required to pay something.

<sup>12</sup> Pammer v. Karl Schlütter GmbH & Co. KG C-585/08 and Hotel Alpenhof v. Mr. Heller C-144/09 are cases from Court of Justice European Union (CJEU) 2010, concerning consumer protection and the jurisdiction of transnational internet and consumer transactions.

- You cannot demand payment when a product is not solicited by the consumer,<sup>13</sup> i.e. the consumer has not purchased the product.
- You must display the total price of the product or service to consumers, including any unavoidable extra fees. Online shoppers do not have to pay any extra costs, if they were not properly informed before they placed the order.<sup>14</sup>

### Unsolicited products

You are not allowed to deliver products the consumer has not ordered and the consumer cannot be obliged to pay for unsolicited products.<sup>15</sup>

### The handling of complaints

Be aware that the regulations concerning faulty products differ according to the national law applicable, but in general the consumer has the right to repair, replacement or reimbursement within, at least, 24 months from the date of purchase.

It is advisable that the consumer should contact you in writing stating their complaint within a moderate time after he or she has detected the defect, if he or she received faulty goods or no goods at all. You should keep copies of all correspondence with the consumer regarding the dispute.

<sup>13</sup> "Too good to be true? It probably is! – Unfair Commercial Practices and Unsolicited Goods", p 26. [http://www.konsumenteuropa.se/globalassets/rapporter/too\\_good\\_to\\_be\\_true\\_it\\_probably\\_is\\_unfair\\_commercial\\_practices\\_and\\_unsolicited\\_goods.pdf](http://www.konsumenteuropa.se/globalassets/rapporter/too_good_to_be_true_it_probably_is_unfair_commercial_practices_and_unsolicited_goods.pdf)

<sup>14</sup> "Consumer Rights: 10 ways the new EU Consumer Rights Directive will give people stronger rights when they shop online", [http://europa.eu/rapid/press-release\\_MEMO-11-450\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-450_en.htm?locale=en), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1>

<sup>15</sup> [http://www.isitfair.eu/pdf/ucp\\_en.pdf](http://www.isitfair.eu/pdf/ucp_en.pdf)



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ECC Denmark ECC Finland ECC Ireland ECC Sweden



## Test your knowledge as trader

### 1. Which of the following information are you NOT required to display on your website?

- a) The total price of the order, including taxes, fees, and delivery costs.
- b) Where and how a conflict is to be solved, in the event of a dispute between you and the consumer.
- c) Your e-mail address.
- d) **Your trust-mark.**

**Answer:** It is not a requirement for you to display a trust-mark on your website. In addition to the above, article 6 of EU Directive 2011/83/EU on Consumer Rights contains an extensive list of pre-contractual information which must be displayed in a clear and comprehensible manner.

### 2. How long is the consumer's cooling off period?

- a) 7 days.
- b) It depends on the country of habitual residence of the consumer.
- c) **14 calendar days.**
- d) The consumer has no legal right to a cooling off period, it is just a service some companies provide.

**Answer:** According to article 9 of EU Directive 2011/83/EU on Consumer Rights, the consumer has the right to a cooling off period of 14 days, starting from the date of delivery of the goods or from the date the contract was concluded, if it concerns services. The rules in this Directive are compulsory and the EU member states are not allowed to decide upon a different cooling off period.

### 3. What happens if you do not inform the consumer of the right of withdrawal?

- a) The consumer does not have any right of withdrawal.
- b) Nothing, the consumer still has the right to withdraw from the contract within 14 days.
- c) **The cooling off period is extended by up to 12 months from the end of the initial withdrawal period.**

**Answer:** If you fail to provide information on the right of withdrawal, the cooling off period is extended to 12 months from the end of the initial withdrawal period as per article 10.1 of EU Directive 2011/83/EU. If you provide the consumer with information on the right of withdrawal within this 12 month period, the withdrawal period expires 14 days after the day upon which the consumer receives that information.

### 4. Which of the following statements about the cooling off period is NOT correct? When a contract has been cancelled...

- a) ...the consumer has 14 days to return the goods.
- b) ...you have 14 days to reimburse all sums paid by the consumer.
- c) **...you always have to cover the cost the consumer pays to send the goods back.**

**Answer:** According to article 14 of EU Directive 2011/83/EU you only have to cover the cost of returning the goods if you have failed to inform the consumer that he or she must bear the cost, or if you have offered to collect the goods yourself. The consumer must send the goods back within 14 days and you have to reimburse

all sums paid by the consumer within 14 days from the day the consumer informs you about his decision to withdraw from the contract. However you may withhold reimbursement until you receive the goods or until the consumer can prove that he has sent the goods back (article 13.3).

## **5. Are you allowed to charge the consumer any extra costs in addition to the price stated on the website?**

a) **No, you are obliged to display the total price, including taxes and fees.**

b) Yes, the price the consumer has to pay does not necessarily have to be the same as the price advertised on the website.

c) It depends on the additional service being offered

**Answer:** You are obliged to inform consumers about the total price, including taxes and fees, as per article 6 of EU Directive 2011/83/EU. If there are any additional charges to the price agreed, you must have the express consent of the consumer. If you do not obtain the consumer's express consent, the consumer shall be entitled to reimbursement of this additional payment according to article 22 of the Directive.

## **6. When do you at the latest have to deliver the products to the consumer after an order has been placed?**

a) You deliver according to your own delivery policy.

b) **If you and the consumer have not agreed otherwise, the products have to be delivered to the consumer no later than 30 days from the date of conclusion of the contract.**

c) The products have to be delivered within 14 days from the date the order was placed.

**Answer:** The products have to be delivered to the consumer no later than 30 days from the date of conclusion of the contract, if you and the consumer have not agreed otherwise, according to article 18.1 of EU Directive 2011/83/EU.

## **7. What happens if you fail to deliver the products within the right time?**

a) The consumer is entitled to a 25% discount on the order price.

b) The contract is terminated and you have to reimburse all sums paid during the contract period.

c) **The consumer can call upon you to make the delivery within an additional period of time.**

**Answer:** The consumer has the right to request a delivery within an additional period of time, appropriate to the circumstances. If you still do not deliver the products within that additional period of time given, the consumer has the right to end the contract and get a reimbursement, as per article 18.2 of EU Directive 2011/83/EU.

## **8. Who is responsible for lost and damaged goods during the delivery?**

a) **It depends on what was agreed to in the contract.**

b) The consumer is responsible for the goods as soon as they leave your business premises.

c) You are responsible for the goods until they are physically delivered to the consumer.

**Answer:** In general, you are responsible for the goods until the consumer has acquired the physical possession of them. This means that if the goods are lost or damaged before they are delivered to the consumer, you are responsible for the costs. However, if the transportation of the goods is arranged by the consumer, he is responsible for the goods directly upon delivery to the carrier. (See article 20 of EU Directive 2011/83/EU).

**9. If you offer supplementary goods or services that the consumer can choose to add to his order, is it permitted to display these as pre-ticked options which requires the consumer to remove a tick from a box in order to decline the extra option?**

a) Yes.

**b) No.**

c) It depends on the situation.

**Answer:** The sale of additional products or services by means of pre-ticked boxes is prohibited by Article 22 of the Directive and the consumer has no obligation to pay for goods sold in this manner. The express consent of the consumer to any additional payments must be obtained before the consumer will be bound.

**10. Is an English company allowed to refuse to sell their product to a Swedish consumer simply by referring them to the equivalent Swedish retailer?**

a) Yes, based on contractual freedom, the trader is allowed to choose which countries he provides his goods or services to.

b) No.

**c) Yes, if the trader's choice is based on objective grounds.**

**Answer:** According to article 20.2 of EU Directive 2006/123/EC on services in the internal market, traders are not allowed to discriminate against consumers because of their nationality or place of residence. (COMMISSION STAFF WORKING DOCUMENT, SWD (2012) 146 final With a view to establishing guidance on the application of Article 20(2) of Directive 2006/123/EC on services in the internal market ('the Services Directive'). (According to the Danish Interpretation of the service-directive "retail trade in goods" might not be covered by the scope of the service-directive.)

However, such discrimination may be permitted if the decision is based on objective grounds. There is no existing official definition of the term objective grounds, therefore it is difficult to definitively state when something is discriminatory, but be aware that it might be discriminatory and illegal to refuse to provide your items or services to certain countries without objective grounds. However, objective grounds can be motivated by an increase of costs due to the actual distance or technical issues due to the provision of the service etc.

For more information please read: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507456/IPOL-IMCO\\_ET\(2013\)507456\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/507456/IPOL-IMCO_ET(2013)507456_EN.pdf)

Enhanced Consumer Protection – the Services Directive 2006/123/EC Analysis of Article 20.2 and Article 21 related consumer complaints reported to ECC-Net between 2010 and 2012 [http://ec.europa.eu/consumers/ecc/docs/ecc-services\\_directive\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/ecc-services_directive_en.pdf)

**11. If you send the consumer unsolicited goods, is he required to pay for them?**

**a) The consumer can never be obliged to pay for products he has not ordered.**

b) If the consumer keeps the products it is to be seen as a consent to the contract and he is required to pay for the goods.

c) It depends on the terms and conditions

**Answer:** Under EU rules it is not permitted to demand payment, or the return or safekeeping of products supplied to a consumer which they have not ordered. The consumer is not even required to send the products back. It is up to you to collect your unsolicited products or pay and arrange for the consumer to send them back.

**12. Let's say you provide anti-aging creams, can you promote the product as reducing wrinkles even if that is not a proved effect?**

a) Yes, it is up to me which information I choose to provide.

**b) No, I cannot use anything that is not true in my marketing material.**

**Answer:** All information you provide to the consumers must be true and not mislead or deceive the consumer in any way (article 6 of EU Directive 2005/29/EC concerning unfair business-to-consumer commercial practices). Any claim made by traders about their product must be clear, accurate and substantiate so if you claim that your anti-age cream reduces wrinkles you need scientific proof on the correctness of that statement. If your information turns out to be false, you risk being fined or having to pay damages.

# Annex I<sup>1</sup>

## A) Instructions on withdrawal B) Withdrawal form

### ANNEX I

#### Information concerning the exercise of the right of withdrawal

##### A. Model instructions on withdrawal

###### Right of withdrawal

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days from the day (1).

To exercise the right of withdrawal, you must inform us (2) of your decision to withdraw from this contract by an unequivocal statement (e.g. a letter sent by post, fax or e-mail). You may use the attached model withdrawal form, but it is not obligatory. (3)

To meet the withdrawal deadline, it is sufficient for you to send your communication concerning your exercise of the right of withdrawal before the withdrawal period has expired.

###### Effects of withdrawal

If you withdraw from this contract, we shall reimburse to you all payments received from you, including the costs of delivery (with the exception of the supplementary costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us), without undue delay and in any event not later than 14 days from the day on which we are informed about your decision to withdraw from this contract. We will carry out such reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of such reimbursement. (4)

(5)

(6)

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<sup>1</sup> Annex I, DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

## Instructions for completion:

1. Insert one of the following texts between inverted commas:

(a) in the case of a service contract or a contract for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, of district heating or of digital content which is not supplied on a tangible medium: ‘of the conclusion of the contract.’;

(b) in the case of a sales contract: ‘on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the goods.’

(c) in the case of a contract relating to multiple goods ordered by the consumer in one order and delivered separately: ‘on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last good.’

(d) in the case of a contract relating to delivery of a good consisting of multiple lots or pieces: ‘on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the last lot or piece.’

(e) in the case of a contract for regular delivery of goods during a defined period of time: ‘on which you acquire, or a third party other than the carrier and indicated by you acquires, physical possession of the first good.’

2. Insert your name, geographical address and, where available, your telephone number, fax number and e-mail address.

3. If you give the option to the consumer to electronically fill in and submit information about his withdrawal from the contract on your website, insert the following: ‘You can also electronically fill in and submit the model withdrawal form or any other unequivocal statement on our website [insert Internet address]. If you use this option, we will communicate to you an acknowledgement of receipt of such a withdrawal on a durable medium (e.g. by e-mail) without delay.’

4. In the case of sales contracts in which you have not offered to collect the goods in the event of withdrawal insert the following: ‘We may withhold reimbursement until we have received the goods back or you have supplied evidence of having sent back the goods, whichever is the earliest.’

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5. If the consumer has received goods in connection with the contract:

(a) insert:

- ‘We will collect the goods.’ or,
- ‘You shall send back the goods or hand them over to us or ... [insert the name and geographical address, where applicable, of the person authorised by you to receive the goods], without undue delay and in any event not later than 14 days from the day on which you communicate your withdrawal from this contract to us. The deadline is met if you send back the goods before the period of 14 days has expired.’



(b) Insert:

- ‘We will bear the cost of returning the goods.’
- ‘You will have to bear the direct cost of returning the goods.’
- If, in a distance contract, you do not offer to bear the cost of returning the goods and the goods, by their nature, cannot normally be returned by post: ‘You will have to bear the direct cost of returning the goods, EUR [insert the amount].’; or if the cost of returning the goods cannot reasonably be calculated in advance: ‘You will have to bear the direct cost of returning the goods. The cost is estimated at a maximum of approximately ... EUR [insert the amount].’ or
- If, in an off-premises contract, the goods, by their nature, cannot normally be returned by post and have been delivered to the consumer’s home at the time of the conclusion of the contract: ‘We will collect the goods at our own expense.’; and,

(c) Insert ‘You are only liable for any diminished value of the goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the goods.’

6. In the case of a contract for the provision of services or the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, insert the following: ‘If you requested to begin the performance of services or the supply of water/gas/electricity/district heating [delete where inapplicable] during the withdrawal period, you shall pay us an amount which is in proportion to what has been provided until you have communicated us your withdrawal from this contract, in comparison with the full coverage of the contract.’

## **B. Model withdrawal form**

(Complete and return this form only if you wish to withdraw from the contract)

- To [here the trader’s name, geographical address and, where available, his fax number and e-mail address are to be inserted by the trader]:
- I/We (\*) hereby give notice that I/We (\*) withdraw from my/our (\*) contract of sale of the following goods (\*)/for the provision of the following service (\*),
- Ordered on (\*)/received on (\*),
- Name of consumer(s),
- Address of consumer(s),
- Signature of consumer(s) (only if this form is notified on paper),
- Date

(\*) Delete as appropriate.

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