

# Module 2

## Right of Withdrawal

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“I feel much more secure to buy online since I know that I can send products back within 14 days.”

**Consumer**

“Consumers feel more secure with the right of withdrawal and buy more and more often online. It allowed my business to grow.”

**Trader**

“I have 14 days to inspect thoroughly the product I bought online; it’s more than enough to take a good decision. Sending the product back is very easy.”

**Consumer**

## Introduction

Dear entrepreneur,

This Handbook is part of the ConsumerLaw Ready project addressed specifically to micro, small and medium-sized companies that interact with consumers.

The ConsumerLaw Ready project is a European-wide project managed by BEUC (the European Consumer Organisation) in a consortium with UEAPME (the Voice of SMEs in Europe) and Eurochambres (the association of European Chambers of Commerce and Industry). It is funded by the European Union with the support of the European Parliament and the European Commission.

The objective of the project is to assist you in complying with the requirements of EU consumer law.

EU consumer law consists of different pieces of legislation adopted by the European Union over the last 25 years and transposed by each EU Member State in their respective national law. In 2017, the European Commission has concluded an evaluation to check whether the rules are still fit for purpose. The result was overall positive<sup>1</sup>. The main finding was that the existing rules need to be better enforced by authorities and better known by businesses and consumers. The ConsumerLaw Ready project aims to enhance the knowledge of traders, in particular of SMEs, regarding consumer rights and their corresponding legal duties.

The Handbook consists of five modules. Each one deals with one particular topic of EU consumer law:

- Module 1 deals with the rules on pre-contractual information requirements,
- Module 2 presents the rules on the consumer's right to withdraw from distance and off-premises contracts
- Module 3 concentrates on the remedies which traders must provide when do not conform with the contract
- Module 4 focuses on unfair commercial practices and unfair contract terms
- Module 5 introduces alternative dispute resolution and the Online Dispute Resolution (ODR) platform, an official website managed by the European Commission dedicated to helping consumers and traders resolve their disputes out-of-court.

This Handbook is just one of the learning materials created within the ConsumerLaw Ready project. The website [consumerlawready.eu](http://consumerlawready.eu) contains other learning tools, such as videos, quizzes and an 'e-test' through which you can obtain a certificate. You can also connect with experts and other SMEs through a forum.

The Module 2 of the Handbook deals with the right of withdrawal from distance and off-premises contracts. It describes what the right of withdrawal is and how it is applied in the EU Member States, and gives you tips to make it easier for you to comply with the law.

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<sup>1</sup> You can find more information about the evaluation, its findings and follow-up actions on the website of the European Commission: [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=59332](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332)

This Module presents the right of withdrawal established by the EU Directive 2011/83/EU on consumer rights (the "Consumer Rights Directive" – CRD), according to which consumers have a right of withdrawal from contracts concluded at a distance and consumer contracts concluded outside of your business premises. For more in-depth information about the provisions of the Consumer Rights Directive, please consult Module 1 or the [Guidance document of the European Commission](#) that is available in all official languages of the EU<sup>2</sup>.

Besides those horizontal requirements, other, mainly sector-specific, information requirements might apply – independently or combined with the CRD information requirements - depending on the contract type (e.g. consumer credit, package travel, etc.). Those other requirements are outside the scope of this handbook, but we encourage you to get familiar with them as well having regard to your specific business area. The [Consumer Law Database](#)<sup>3</sup> and the [Your Europe Business Portal](#)<sup>4</sup> can help you gather the relevant information.

We hope that you find the information provided in the Handbook useful.

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<sup>2</sup> See [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/index\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm)

<sup>3</sup> See [https://e-justice.europa.eu/content\\_consumer\\_law-505-en.do](https://e-justice.europa.eu/content_consumer_law-505-en.do)

<sup>4</sup> See <http://europa.eu/youreurope/business/>

# Module 2

## What is the right of withdrawal?

The right of withdrawal is a powerful tool that EU law gives to the consumer.

It allows the consumer to cancel, without justification, the consumer contract within 14 days after he received the good, or after he concluded the contract for services or digital content.

A consumer contract is any contract that the trader concludes with a consumer, irrespectively of whether it has for its object the supply of goods, services and / or digital content.

For instance, a contract concluded online with the consumer regarding the online sale of a book<sup>5</sup>.

## When does a consumer have a right of withdrawal?

Under the EU Directive 2011/83/EU on consumer rights (the "Consumer Rights Directive" – CRD), consumers have a **right of withdrawal from consumer contracts concluded at a distance and consumer contracts concluded outside your business premises**. In these two types of contract, this right is granted because it is considered that the consumer's "weakness" in these particular cases is more important than in other contracts. In the case of distance contracts, the consumer has no possibility to materially ascertain the product's features, and in the case of off-premises contracts the consumer may find himself in a situation where he/she is more vulnerable to pressure.

The right of withdrawal exists irrespectively of whether the contract is for the supply of goods, provision of services or provision of digital content.

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<sup>5</sup> See Module 1 on pre-contractual duty of information

## What is a distance selling consumer contract?

**Distance selling contracts** are consumer contracts in which there is no simultaneous presence of the trader and the consumer at the same place at the moment of conclusion of the contract through a means of distance communication. Some of the examples of the distance contracts include agreements concluded by mail order, online, telephone or fax.

The distance contract also includes situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services and subsequently negotiates and concludes the contract at a distance. For example, the situation when the consumer goes to the shop and checks several handbags, then goes home and orders one of the handbags via phone will be considered as a distance contract. On the contrary, a contract which is negotiated at the business premises of the trader, but which is finally concluded by means of distance communication will not be considered a distance contract.

Neither should a contract initiated by means of distance communication (e.g. an email), but finally concluded at the business premises of the trader be considered as a distance contract. Similarly, the distance contract does not cover reservations made by the consumer through a means of distance communications, as it would be the case with the consumer phoning to request a reservation in a restaurant.

## What is an off-premises consumer contract?

**Contracts negotiated outside of business premises** are the contracts concluded at the simultaneous physical presence of the consumer and yourself/your representatives, but at a place which is not your business premises. Business premises include the

premises in whatever form (e.g. shops, lorries, stalls, etc.) which serve as a permanent or usual place of business for the trader. The business premises also include the premises which the trader uses on a seasonal basis (e.g. ice cream shop at the beach during the summer).

Typically, contracts negotiated outside of business premises are contracts concluded at the consumer's home, consumer's workplace or during an excursion organised by the trader.

### 1. a consumer buying a dress online



### 2. a consumer accepting the provision of a special telecommunication service (e.g. calls to the USA for 1EUR/min) over the mobile phone,



### 3. a consumer ordering a book through regular mail,



### 4. a consumer buying a vacuum cleaner at her doorstep,



### 5. a consumer signing in for the gym services at his workplace,





**6. a consumer buying a pillow and a duvet at an excursion organised by a trader (e.g. in a restaurant or shop)**



**What are the specific consumer rights for these two types of contracts?**

Whether the contract is concluded at a distance or outside business premises, the consumer has a period of fourteen calendar days to re-consider the decision on whether to maintain the contract concluded with the trader.

During this period, the consumer can withdraw from the contract. He/she does not need to provide any explanation or justification of this decision. Moreover, the consumer must not incur any costs other than for sending back the good or for a diminished value in case of mishandling the product, as further explained below.

The right of withdrawal is fully harmonised in the EU. This means that the same rules apply in all Member States in this regard. Regardless of whether you offer your products or services to consumers from other Member States, the duration of the right of withdrawal period will be the same and you do not have to investigate whether there are differences between the levels of protection.

**What are the exceptions to the right of withdrawal?**

In certain cases, the consumer will not have the right to withdraw from the contract. The right of withdrawal will not exist in case of the following contracts:

- a) for the provisions of services after the service has been fully performed, provided that the performance has begun with the consumer's prior express consent, and with the acknowledgement that he will lose his right of withdrawal once the contract has been fully performed by the trader;  
**Example:** a consumer who has concluded online a contract with the gym on provision of three classes of personal training which he starts using the next day and finishes before the end of the 14 days, consenting that he will lose his right of withdrawal once these three classes have been provided.
- b) for the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period;  
**Example:** the goods whose price depend on the value of a foreign currency.
- c) for the supply of goods made to the consumer's specifications or clearly personalised;  
**Example:** a tailor-made suit.
- d) for the supply of goods which are liable to deteriorate or expire rapidly;  
**Example:** any easily perishable goods, such as fresh vegetables
- e) for the supply of sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery;  
**Example:** needles for medical usage; certain

cosmetic products such as lipsticks; mattresses

- f) for the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;  
**Example:** sand that is mixed with some other substance
- g) for the supply of alcoholic beverages, whose price has been agreed at the time of the conclusion of the sales contract, whose delivery can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;  
**Example:** vin en primeur
- h) where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, during the visit, the trader provides services that are additional to those specifically requested by the consumer (i.e. repair or maintenance), the right of withdrawal will apply to those additional services or goods. Similarly, if during the visit the trader supplies goods other than the replacement parts necessary to carry out the repair or maintenance, the right of withdrawal shall apply to these goods.  
**Example:** a requested roof repair following damages (e.g. after a storm). If, in addition to the roof repair, the consumer decides to buy some bricks from the same trader the withdrawal period will apply to these bricks. Similarly, if the consumer decides to introduce an additional layer of isolation to the roof, the right of withdrawal would apply to this service.
- i) for the supply of sealed audio or video recordings, or sealed computer software, which were unsealed after delivery;  
**Example:** a DVD sold in plastic wrap that was

opened

- j) for the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;  
**Example:** daily newspapers
- k) concluded at a public auction;  
**Example:** public auction of paintings. Please note that this does not apply to auction platforms such as e-bay.
- l) for the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance;  
**Example:** reservation of a hotel room for a specific weekend.
- m) for the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.  
**Example:** downloading an application for the mobile phone if downloading started and the consumer acknowledged losing his right to withdrawal<sup>6</sup>.

If you want to be sure that the consumer agrees in accordance with the law that he will not have a right of withdrawal, you may ask him to give his consent in the following form: "I hereby consent to immediate performance of the contract and acknowledge that I will lose my right of withdrawal from the contract once the download or streaming of the digital content has begun."

<sup>6</sup> See point a) : consumer needs to give his/her prior express consent, and acknowledge that he/she will lose his right of withdrawal once the contract has been fully performed by the trader.

As explained in Module 1, for some specific types of contracts, the Consumer Rights Directive does not apply (for example, contracts for healthcare and financial services, acquisitions of immovable property). In these cases, the right of withdrawal would only exist under the provisions of other pieces of applicable sector specific legislation (ex. Directive 2008/48/EC on consumer credit).

## Do I need to inform the consumer about their right of withdrawal?

Yes, where such right exists, in order to make the right of withdrawal effective, the trader has the obligation to inform the consumer about the existence and modalities of their right to withdraw from the contract<sup>7</sup>. The information to be provided to the consumer regarding his right of withdrawal must include:

- the conditions
- time limit
- procedures for exercising their right of withdrawal
- the fact that the consumer bears the cost of returning (+ if return by normal post is not possible, then the actual costs)
- The fact that if the consumer withdraws after having requested the start of services, he has to pay the proportionate costs of service used up until that moment.
- If applicable: the fact that the consumer has no right of withdrawal (see exceptions above) or the circumstances under which he loses this right
- Model withdrawal form (see below or in annex 1)

The trader may grant the consumer rights that go beyond what is legally required, e.g. a longer time limit, but in any case he must ensure that the consumer

receives at least all the information about the right of withdrawal that is legally required.

Both for distance and off-premises contracts, the trader has to give the consumer a model form to withdraw from the contract on a durable medium (paper, disc...).

In case of an online contract, this could be, for example, an email that contains a form. An Internet website cannot be considered as providing information on a durable medium as the Internet website is not a constant, but a changeable medium. It is therefore not enough if the trader only directs the consumer to a particular webpage.

## What is the model withdrawal form?

An EU-wide model withdrawal form is provided in the law itself<sup>8</sup>. This very succinct model form, also available in Annex 1, must be provided to the consumer:

- 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

<sup>7</sup> See Module 1 on the pre-contractual information requirements

<sup>8</sup> Cf. Annex IB of the Consumer Rights Directive

It is very important to inform the consumer in a clear and comprehensible manner about the right of withdrawal and to provide him with the model form. It allows consumers to exercise this right effectively and avoids negative consequences for you (incl. possible penalties) for failure to do so (see question on the consequences of failing to inform consumers about the right of withdrawal).

Be aware that in addition to email and other forms of communication, the trader can give the option to the consumer to electronically fill in and submit either the model withdrawal form or any equivalent statement on the company's website. In these cases, the trader shall communicate to the consumer an acknowledgement of receipt of such a withdrawal on a durable medium without delay.

## How to calculate the time period for the withdrawal?

The withdrawal period is fourteen calendar days in all Member States. In case of a sales contracts, the fourteen days period starts from the moment when the consumer acquires physical possession of the goods (or the last good/piece in case of multiple goods or good consisting of multiple lots or pieces ordered). For example, in case of an online purchase of a dress, the consumer has the right to withdraw from the contract within 14 days as of the receipt of that dress and then has up to 14 days after informing the trader of his withdrawal to send back the dress.

In case of **service** contracts and the contract for online **digital content**, the time period starts at the moment of the conclusion of the contract. In case of a consumer who has enrolled for French language classes online, the consumer has the right to withdraw from that contract within 14 days from the conclusion of that

contract. In case of **mixed purpose** contracts, the start of the time period will depend on the main purpose of a particular contract, i.e. whether it is prevalently a sales contract or it is prevalently a services contract, and, accordingly the applicable rule for the sales or for the services contract will apply. For example, in the case of the distance purchase of a car radio which includes a relatively simple installation, the period will start at the moment when the radio is delivered whereas in case of concluding an online contract on the organisation of a seminar which also includes distribution of the pens and papers to the participants, the start of withdrawal period will occur at the moment of the conclusion of such a contract as it is primarily a services contract.

Sundays and public holidays are included in the 14 days. However, if the end of the 14 days falls on a Sunday or public holiday, the withdrawal period expires at the end of the following working day.

A consumer has exercised his withdrawal right timely if he has sent the communication with which he withdraws from the contract within the prescribed period of fourteen calendar days. The consumer has to prove that the withdrawal decision has been made within the fourteen calendar days. If the consumer withdraws from the contract, he has another 14 days to send the good back.

## Can the right of withdrawal be excluded?

The right of withdrawal is guaranteed by law. It can never be excluded or limited.

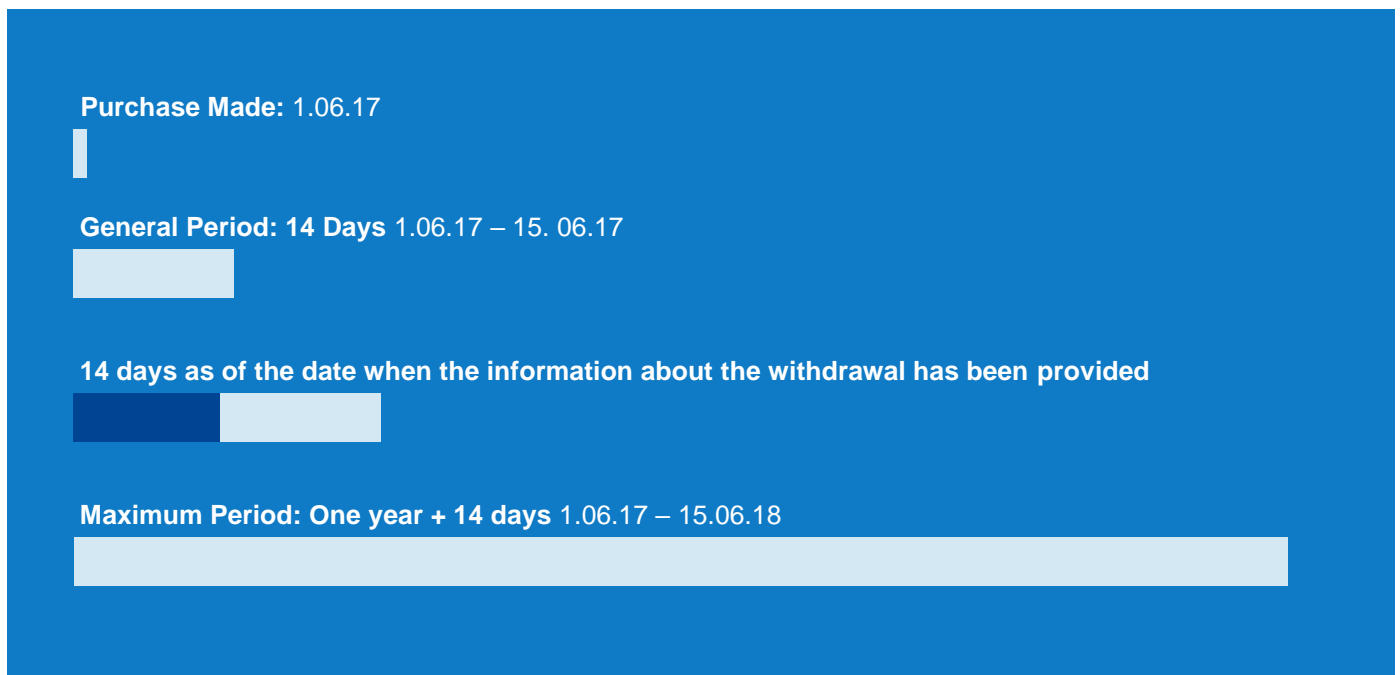
Any exclusion or limitation of the right of withdrawal would be contrary to the law and likely to be classified

as a breach of the rules on unfair contract terms and on unfair commercial practices<sup>9</sup>.

Please remember that there are some statutory exclusions of the right of withdrawal in certain cases which have been explained before.

## What are the consequences if you fail to inform the consumers about their right of withdrawal?

Informing the consumer of the right of withdrawal before concluding a consumer contract is very important<sup>10</sup>.



<sup>9</sup> See Module 4 on Unfair Commercial Practices and unfair contract terms

<sup>10</sup> See module 1 on pre-contractual information requirements

If you fail to inform the consumer about his right of withdrawal, the time period during which he can terminate the contract extends by 12 months! That means that a consumer who has not been correctly informed about his right of withdrawal has up to 12 months and 14 days to cancel the contract in question.

In case you have forgotten to provide information about the right of withdrawal before conclusion of the contract, you are advised to inform the consumer as soon as possible about his right (and in any case within 12 months) in which case he has 14 calendar days from the date of this information.

## In what manner can the consumer withdraw from the contract?

The consumers can choose the way in which they decide to inform you about their decision to withdraw from the contract. The statement setting out the decision to withdraw from the contract must, however, be straightforward. Simply returning back the goods without any statement as to the withdrawal from the contract would not be enough. Consumers may use the model withdrawal form that you as trader has provided them before conclusion of the contract, but they are not obliged to. As the burden of proof for having withdrawn from the contract within the 14 days period is on the consumer, it is in their own interest to use a durable medium. If the trader offers the option to the consumer to inform about the withdrawal statement electronically through its website, and the consumer uses this option, the trader has to send a confirmation (on a durable medium) to the consumer.

The trader cannot refuse the exercise of the right of withdrawal during the prescribed time period.

The consumer is not obliged to give any reason for the withdrawal of the contract and does not have to pay

any cost apart from the costs of returning the goods if the trader informed him that he has to bear that cost.

## Has the consumer the right to use the product before withdrawal?

In case they want to make use of their right of withdrawal, consumers are not allowed to use the product. However, they can inspect and test the goods to an extent which is necessary to establish the nature, characteristics and the functioning of the acquired goods. This means in practice that the consumer can only handle and inspect the product in the same manner they would do it in a traditional shop. For example, the consumer could try on a new suit in a shop without removing the tags. However he would not be entitled to configure software on his laptop<sup>11</sup>.

If the consumer handled or used the goods to an extent that is more than necessary to establish the nature, characteristics and the functioning of the goods, the consumer does not lose his right of withdrawal, but will have to compensate the trader for any diminished value of the goods.

For example, the consumer is not entitled to buy a dress on the Internet to wear for one occasion (e.g. a wedding reception) and then withdraw from the contract and return the dress. In that case, the trader can charge the consumer for the diminished value.

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<sup>11</sup> You can find more practical examples on p.47 of the Guidance document related to the Consumer Rights Directive: [http://ec.europa.eu/justice/consumer-marketing/files/crd\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/crd_guidance_en.pdf)


## Who needs to prove the diminution in value of the product?

In case the consumer withdraws from a contract after having used the product, the burden of proof that the value of the good is diminished lies on the trader.

For this reason, if you have activities that include off-premises or distance selling contracts, we recommend that you have a system in place allowing you to check whether the goods were mishandled by the consumer.

Setting up a mechanism to verify whether a particular product has been used will help in case of a dispute with a consumer. You may in specific cases, for instance, use a specifically designed tool or procedure to check that. For example, an up-to-date inventory control system, through which goods come in and there is an immediate check on whether there is something missing or whether there are traces of abrasion. However, you will have to bear the cost for such verification.

Please note that in cases where the trader has failed to inform about the right of withdrawal and the period is extended by up to 12 months, the consumer may withdraw from the contract after a considerable time, during which he has been effectively using the good without bearing any liability for the resulting wear and tear.

EU law does not regulate the enforcement of consumer's liability for the diminished value of the goods. General contract and procedural laws of Member States apply, and, for example, traders may be allowed to reduce the amount to be refunded. 

## Consequences of the withdrawal

When a consumer informs you of his withdrawal, he is released from any obligations included in the contract.

The consumer bears the costs of returning the goods except if it was agreed that the trader would bear the costs. However, the trader needs to inform the consumer clearly and before conclusion of the contract about the fact that the consumer should pay the costs of returning the good. If the trader fails to do so, the trader will have to bear the cost of returning the goods.

If the consumer decides to withdraw from a contract, you have to reimburse him including all payments that you have received. The reimbursement needs to be done through the same means of payment as the one used to buy the product. (e.g. no reimbursement through vouchers is allowed). For instance, if the consumer decides to return the book he bought from you online using his credit card, you need to give him back the full price of the book including all the taxes as well as delivery costs on the account connected to the credit card used for the payment.

The trader needs to reimburse the entire amount he has received from the consumer within 14 days starting from the day on which he has been informed of the consumer's decision to withdraw from the contract.

The reimbursement can however be withheld until either:


- the trader receives the goods; or
- the trader receives proof that the goods have been sent back, whichever is the earliest.

#### Four main rules can be summarized below:

1. the consumer has the right to withdraw from a contract within 14 days as of the delivery of the goods or the conclusion of a contract for services (with the exception of digital content not provided on tangible medium: if the performance has begun (i.e. the consumer started downloading content) and the consumer has a) given its prior consent and b) acknowledged that he is to lose his right of withdrawal;
2. the consumer's right to withdraw extends for up to one year in case the trader fails to inform the consumer about the existence of the right of withdrawal;
3. the trader needs to fully reimburse the consumer within 14 days starting from the day when the trader has been informed about the withdrawal, but the trader can withhold reimbursement until he receives the goods back or receives a proof that the consumer has sent the goods back, whichever is the earliest;
4. the consumer needs to return the product within 14 days as of the day when the consumer notified the trader about the decision to withdraw.


### What are the sanctions for the trader's failure to comply with the rules on the right of withdrawal?

As already stated above, if you fail to provide the consumer with the information on the right of withdrawal, this right gets extended for an additional period of time of up to one year.

Moreover, the trader's failure to comply with any of the rules related to the right of withdrawal will represent a breach of the national rules transposing the Consumer Rights Directive for which Member States have to put in place deterrent penalties<sup>12</sup>. 

### Cross-border sales: what happens when I offer my products or services to consumers outside my country?

The provisions on the right of withdrawal are fully harmonised in the EU. This means that there are no differences between Member States and your rights and obligations are the same across the EU. The only differences may lie, as mentioned above, in sanctions applied differently by Member States.

In order to know which national legislation applies when it comes to sanctions, please read the below. It is also important to pay attention to the paragraph devoted to competent courts, which may be of interest in case of a dispute on the right of withdrawal. 

<sup>12</sup> For instance, in ITALY Art. 27 of the consumer code sets out the minimum fine of €5,000 and a maximum financial penalty of €5,000,000. These amounts apply both to infringements in respect of either the Unfair Commercial Practices Directive, Consumers Rights Directive or both in parallel. In the event of repeated non-compliance, the Authority may order the trader to suspend trading for a period which shall not be more than thirty days. In FRANCE, the revised 2016 French Consumer Code sets a fine of up to EUR 3,000 (natural persons) or EUR 15,000 (legal persons). In Cyprus, breaches of the Consumer Rights Directive are punishable by up to 5 % of the annual turnover or up to EUR 200 000. In Latvia by up to 10 % of the annual turnover with a cap of EUR 100 000 and in the Netherlands by up to 1 % of the annual turnover or up to EUR 900 000. See also the table with penalties in Module 1 ANNEX 2



## Specific treatment of sales that you direct to foreign consumers

Under EU law<sup>13</sup>, if you direct your business activities to consumers in EU countries different from your own, it is usually the law of the country in which the consumer lives that applies to your contract with the foreign consumer. If you have both chosen a different law, that choice cannot deprive your foreign consumer of the protection granted by the mandatory provisions of his country of residence.

Therefore, if, for example, your website is directed at the consumers in a Member State that has imposed language requirements under Article 6(7) of the Consumer Rights Directive, you must provide the consumer with contractual information in the language required by that Member State. More generally, whenever you advertise or offer your goods or services in other Member States, you must respect the standard of consumer law protection of the countries you target.

## When are you considered to direct explicitly your business activity to consumers in another country?

The Court of Justice of the European Union has laid down a number of non-exhaustive criteria for establishing whether your marketing activities are 'directed' at a specific Member State. Such criteria entail, for example, the use of languages or currencies other than those generally used in the Member State of your company's place of establishment, the mention of telephone numbers with an international code, the use of a top-level domain name other than that of the Member State in which your company is established<sup>14</sup>.

If you are not directing your activities to other EU countries, however, and a consumer from another EU Member State approaches you on his/her own initiative, then your national law applies.

## What does this mean for you in practice?

### What law will be applicable to your cross-border contracts?

At first sight, it might appear complex for a small trader to comply with the law of the country of its different customers, in different countries. It might prevent some traders to offer their goods or services across the border. However, in practice:

1. EU legislation provides, as we describe under the Consumer Law Ready modules, for an important amount of harmonized provisions of consumer protection. These rules apply all over the EU.
2. Even if, on some elements, there are differences left between Member States, this does not mean that you are not allowed to have your contracts with consumers designed under your own legislation: as explained above, you can agree with the consumer that another law should be applicable, in which case you only have to respect the mandatory consumer law of the State where the consumer lives.
3. In practice, the mandatory consumer legislation of another State will only be relevant if its rules are more protective than those of your legal system or the law you have agreed upon with the consumer. This might be the case where, for example, the legal guarantee period of the consumer's law is longer than the one under your own law.
4. Also thanks to the ConsumerLawReady training modules, you will be able to know in advance which additional requirements may apply in which other Member State to which you're considering to direct your business activities.

<sup>13</sup> Notably the so called "Rome I" Regulation 593/2008.

<sup>14</sup> For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

5. The question of the applicable law will often be relevant only if there is a disagreement with the consumer. Many misunderstandings can be solved amicably or by using your in-house complaint service.

## When a dispute occurs in relation to a cross border contract, what court is competent?

If, with your offers, you direct your activities to consumers in other EU countries and happen to have a dispute with one of your consumers from another EU country, be aware that the competent court to decide over such a dispute will always be, under EU law, that of the country in which the consumer lives. You cannot sue the consumer before a court of another country and if you stipulate such an option in your terms and conditions, you would risk a severe fine. The consumer, by contrast, has the option to sue you before your home court as well. For cross border cases, in order to make it easier to solve disputes, the EU has set up an ODR platform that makes it possible to liaise between ADR systems in different Member States<sup>15</sup>.

**Example:** if you are a French trader based in Lille selling your products to Belgian consumers, you cannot establish in your terms and conditions that, in case of a dispute, the only competent courts to solve the dispute are the courts in Lille.

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<sup>15</sup> See Module 5 of this handbook

## Checklist for the traders:

**In order to be on the safe side, always check:**

1. whether the consumer's right of withdrawal exists for the type of consumer contract you are concluding;
2. that you have informed the consumer timely and clearly of his right of withdrawal;
3. that you have informed the consumer timely and clearly that in case of the decision to withdraw from the contract, the consumer needs to bear the costs of returning the product back to the trader;
4. that you have provided the consumer with the model withdrawal form;
5. that, if the consumer chooses to withdraw from a contract, you respect all of the obligations, in particular those related to the full refund of consumer.

# Annexes

## ANNEX 1 – Model withdrawal form as laid down in Annex IB of the Consumer Rights Directive

*(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]

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