



# Module 1

## Pre-contractual information requirements

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## Table of Contents

Introduction .....	4
What is EU consumer law? .....	7
Can I exclude or limit the application of consumer law? .....	7
Is everyone who buys from me a consumer? .....	7
What happens in case of transactions with dual purposes? .....	9
What is a consumer contract? .....	9
What are pre-contractual information requirements? .....	10
Are any consumer contracts exempted from the pre-contractual information requirements laid down by Directive 2011/83/EU on consumer rights? .....	11
Which pre-contractual information requirements apply to consumer contracts concluded in my shop ("on-premises contract")? .....	12
Which information requirements apply to consumer contracts concluded at a distance or outside your business premises? .....	14
How do you have to present pre-contractual and contractual information? .....	16
In what language does this pre-contractual and contractual information need to be presented? .....	18
In case of contracts negotiated outside of business premises, is it sufficient that I tell the consumer orally all these pieces of information? .....	18
Do I need to present this pre-contractual and contractual information in different manners, depending on who are my target consumers? .....	18
Cross-border sales: what happens when I offer my products or services to consumers outside my country? .....	19
What does this mean for you in practice? .....	19
When a dispute occurs in relation to a cross border contract, what court is competent? .....	20
What are the consequences if I do not provide the pre-contractual information requirements? .....	21

**“If traders inform me clearly and comprehensively, this improves my trust both in them and in the market”**

**Consumer**

**“Clear and comprehensive information before I buy helps me make sound decisions on whether or not I really want certain products”**

**Consumer**

**“Making sure all traders comply with their duty to inform their customers clearly and comprehensively before they buy secures a fairer level-playing field in the market”**

**Trader**

## 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 1 of the Handbook aims to make you familiar with the pre-contractual information that you as a trader need to disclose before concluding a contract with a consumer. It describes what information, how and when you need to provide, 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)

The Module presents the pre-contractual information requirements laid down in Directive 2011/83/EU on consumer rights (the "Consumer Rights Directive" - CRD) which has been transposed in the national laws of EU Member States. For more in-depth information about the provisions of the Consumer Rights Directive, please consult the [Guidance document of the European Commission](#)<sup>2</sup> that is available in all official languages of the EU.

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/home.do>

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

# Module 1

## What is EU consumer law?

EU consumer law consists of different sets of rules.

They deal with the fairness of commercial practices, fairness of contract terms, pre-contractual information requirements, consumer's right of withdrawal and other consumer protection rules specific for particular types of consumer contracts (e.g. contracts negotiated outside of business premises, contracts concluded at a distance, e.g. online) and/or sector-specific ones (e.g. consumer credit contracts, package travel contracts, timeshare contracts, etc.).

Respecting all consumer laws might sound difficult at first. Now that you have this Handbook in your hands, you have what you need to better comply with the law! Depending on your business area, make sure you to also get familiar with other relevant general and/or sector specific information requirements.

In the case of Malta, the main body of laws concerning consumer law relates to Chapter 378 – the Consumer Affairs Act.

Not all laws implementing the EU consumer protection directives or which are intended to protect consumers have been enacted within the framework of the Consumer Affairs Act or are administered or enforced by the Malta Competition and Consumer Affairs Authority. Hence issues related to the travel and leisure industry notably package travel and timeshare are dealt with by regulations issued under the Malta Tourism and Travel Services Act <sup>5</sup>. Other laws relating to consumer protection issues not dealt by or under the Consumer Affairs Act include the Manufacture and Importation of

<sup>5</sup> See Legal Notice 157 of 2000 as amended by Legal Notice 258 of 2001 entitled the 'Package Travel, Package Holidays and Package Tours Regulations', Legal Notice 109 of 2011 entitled the 'Protection of Consumers in respect of certain aspects of Timeshare, Long-Term Holiday Product, Resale and Exchange Contracts) Regulations. and Legal Notice 287 of 2010 entitled 'Timeshare and Timeshare – like Products Promotion (Licensing of OPC Representatives) Regulations'

<sup>6</sup> See Legal Notice 381 of 2005.

Medicinal Products for Human Use Regulations <sup>6</sup> enforced by the Medicines Authority and the Distance Selling (Retail Financial Services) Regulations <sup>7</sup> enforced by the Malta Financial Services Authority.

As stated above, the [Consumer Law Database](#)<sup>8</sup> and the [Your Europe Business Portal](#)<sup>9</sup> can also help you find the relevant information.

## Can I exclude or limit the application of consumer law?

Neither you nor anyone else can ever exclude or limit the application of consumer law.

For example, it is illegal to write contract terms stating your intention to exclude or limit the application of consumer law, such as: "To this contract, consumer contract rules will not apply, but the rules of general contract law". Stating so would not only remain without legal effects and not be binding for the consumer; it may also, under certain circumstances, represent an unfair commercial practice<sup>10</sup>.

## Is everyone who buys from me a consumer?

EU consumer law requirements apply to you whenever you offer your products (goods, services, digital content) to a "consumer" in any EU country. Therefore the definition of "consumer" is important.

<sup>7</sup> See Legal Notice 36 of 2005.

<sup>8</sup> See Consumer Law Database  
<https://e-justice.europa.eu/home.do>

<sup>9</sup> See <http://europa.eu/youreurope/business/>

<sup>10</sup> See Module 4 on unfair commercial practices and unfair contract terms

The consumer is any natural person who buys a product from you that he/she will not use for professional, but only for personal purposes.

**Example:** the consumer is the person who consumes the goods you sell and the services you supply, i.e. a couple who buys plates and cutlery for their family home or home cleaning services provided to an elderly person.



A consumer can only be a physical person. Legal entities, i.e. companies or associations, cannot qualify as consumers; however, in some Member States such entities enjoy a similar level of protection as some of the rules protecting consumers have been extended to afford protection also to businesses.

In Malta's case Chapter 378 of the Maltese laws<sup>11</sup> entitled the Consumer Affairs Act defines consumer as follows:

*“ consumer means - (i) any individual who in transactions and other matters covered by this Act or any regulations made thereunder, is acting for*

*purposes which are not related to his trade, business, craft or profession; and*

*(ii) any other individual not being the immediate purchaser or beneficiary, and whether or not a member of the consumer's household, who having been expressly or tacitly authorised or permitted by the consumer, may have consumed, used or benefited from any goods or services provided to the consumer by a trader acting in the course of a trade, business, craft or profession, including goods or services provided as part of gift schemes and similar or analogous inducements; and*

*(iii) any other class or category of persons whether natural or legal as may, from time to time, be designated as "consumers" for all or for any of the purposes of this Act by regulations made by the Minister after consulting the Council:*

*Provided that for the purposes of Title I of Part VII<sup>12</sup> of this Act, the definition of "consumer" shall only consist of paragraph (i) above”.*

What is meant here is that a consumer is anyone who buys or hires a product or a service, for his or her own personal use.

Member States may not introduce a different legal definition of "consumer", which is fully harmonised at European level.

When someone buys products for professional purposes, for example to resell them further in the supply chain, consumer law does in principle not apply.

**Example:** persons who buy plates and cutlery for the restaurant they run are not consumers; thus, consumer law will not apply. Equally, if your company provides window cleaning services to another company,

<sup>11</sup> CAP 378 - Consumer Affairs Act:  
<http://mccaa.org.mt/en/information>

<sup>12</sup> This refers solely to unfair commercial practices



consumer law will not apply. However, in such cases other sets of EU and/or national rules will apply.

In some countries, the use of a VAT number is a good indication of whether or not a buyer acts as a consumer.

## What happens in case of transactions with dual purposes?

You might wonder: what happens when someone buys a product for both their personal and professional usage?

**Example 1:** a lawyer buys a computer she will use to write emails to her family but also to draft briefs for her clients.



**Example 2:** a person has her roof repaired; he/she lives in a part of the house with his/her family and uses the other part as a shop for selling clothes.



Does consumer law apply in such situations where there is both a personal and a professional dimension to the sale or service contract?

This is called a “dual purpose contract”: a good or a service has a double purpose. In such cases, in order to determine whether consumer law applies, one needs to check the prevailing purpose of that contract. In other words, the task is to verify whether the lawyer will use her computer more for writing personal emails or for preparing documents for her clients. Similarly, the question is whether the house mentioned represents more a place to sell clothes or a family home.

**Example:** if the computer is used 20% of the time to write emails to clients and 80% of the time to write personal emails, the contract will be protected by consumer law.

## What is a consumer contract?

A consumer contract is any contract a trader concludes with a consumer, no matter through which channel (e.g. on the Internet, via telephone or in a shop) and irrespectively of whether it has as its object the supply of goods, services and/or digital content.

For instance, a contract concluded online with the consumer for the sale of a book.

The Consumer Rights Directive (CRD) distinguishes between "on-premises contracts" (e.g. consumer contracts concluded in a shop), "distance contracts" (e.g. consumer contracts concluded on the Internet or via telephone) and "off-premises contracts" (e.g. consumer contracts concluded at consumer's home).

Contrary to the "**on-premises contracts**", "**distance contracts**" are those where there is no simultaneous physical presence of the trader and the consumer at the moment of conclusion of the contract. Typical examples of contracts concluded at a distance include those concluded by mail order, online, telephone or fax.

Distance contracts also include situations where the consumer visits the business premises merely for the purpose of gathering information about the goods or services but subsequently negotiates and concludes the contract at a distance. On the contrary, a contract initiated by means of distance communication (e.g. an email or a phone-call to fix an appointment or make a reservation), but concluded at the business premises of the trader should not be considered as a distance contract.



**"Off-premises contracts"** are those concluded at the simultaneous physical presence of the trader and the consumer, but at a place which is not the trader's business premises. Business premises include the premises in whatever form (e.g. shops, 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 those concluded at the consumer's home or workplace or during an excursion organised by the trader.

Whilst for on-premises contracts Member States may add pre-contractual requirements to those laid down in the Consumer Rights Directive<sup>13</sup>, for distance and off-premises contracts the pre-contractual information requirements are all laid down in that Directive and Member States may not add other ones. Thus, if you wish to offer your products or services to consumers in different EU countries, you can do so from your website by simply making sure that you correctly translate in all relevant languages exactly the same, comprehensive pre-contractual information.

## What are pre-contractual information requirements?

Pre-contractual information requirements are pieces of information which have been identified by the legislator as important to ensure that the consumer makes an informed choice before concluding a contract. Directive 2011/83/EU lays down a list of pieces of information which a trader needs to disclose to the consumer before the consumer concludes a contract on-premises, off-premises or at a distance.

Please note that, also at stages prior to the pre-contractual one, such as during advertising, traders across the EU must act according to professional

<sup>13</sup> See Annex 1

diligence and disclose all the elements which average consumers would need to take informed transactional decisions. Failure to do so may amount to a misleading action or omission.<sup>14</sup>

## Are any consumer contracts exempted from the pre-contractual information requirements laid down by Directive 2011/83/EU on consumer rights?

Yes, the pre-contractual information requirements laid down in the Consumer Rights Directive do not apply to the following contracts:

- a) contracts for social services, such as social care;
- b) contracts for healthcare services;
- c) contracts for gambling, including within lotteries, casino games and betting transactions;
- d) contracts for financial services, such as different consumer credit agreements;
- e) contracts for the creation, acquisition or transfer of immovable property or of rights in immovable property;
- f) contracts for the construction of new buildings, the substantial conversion of existing buildings and for rental of accommodation for residential purposes;
- g) contracts on package travel, package holidays and package tours;
- h) contracts on timeshare, long-term holiday product, resale and exchange contracts;
- i) contracts which, in accordance with the national laws of Member States, are established by a public office-holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with knowledge of its legal scope;
- j) contracts for the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace;
- k) contracts for passenger transport services;
- l) contracts concluded by means of automatic vending machines or automated commercial premises;
- m) contracts concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

However, pre-contractual information duties exist for many of them under other pieces of EU or national law. This is the case, for example, for contracts in relation to credit agreements for consumers<sup>15</sup>.

Moreover, according to the provisions of the Consumer Rights Directive, some Member States have also adopted national rules which exempt traders from pre-contractual information requirements for 'low value contracts': this is the case in Austria, Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovenia,

<sup>14</sup> See Module 4 on unfair commercial practices and unfair contract terms

<sup>15</sup> Pre-contractual information requirements are set out by the revised Consumer Credit Directive (2008/48/EC).

Sweden and the United Kingdom. Please have a look at ANNEX 1 to discover more about these specificities.

**Example:** In Malta's case, the Consumer Rights Directive (CRD) regulations do not apply to off-premises contracts under which the overall price payable by the consumer does not exceed thirty euros (€30)<sup>16</sup>.

## Which pre-contractual information requirements apply to consumer contracts concluded in my shop ("on-premises contract")?

Thanks to the Consumer Rights Directive, there are by now across the EU 8 key information items you have to clearly present to consumers before they conclude any sale or service contract with you in your shop, if that information is not already apparent from the context where you operate. Those are:

1. The **main characteristics** of the goods or services you offer: all details presenting the principal features of the product that is for sale.

**Example:** indicate on the price tag that the jacket you are selling in your shop is a leather jacket.

**Example:** indicate the characteristics of the phone you sell: it has a memory of 64KB.  
It is important that the medium used to provide this information is easily readable and comprehensible to an average consumer; this medium can be, for example, an email or a piece of paper.

2. **Your identity**, such as your trading name, the geographical address where you are established

and your company's telephone number.

The address of a shop or a restaurant (geographical address) constitutes an obvious example of information being apparent from the context, in case of on-premises contracts.

3. The **total price** of the goods or services you offer. This means that the price needs to be fully complete, i.e. it must include all of the applicable taxes, additional freight, delivery and postal charges. If the price cannot be calculated in advance, what you need to disclose to the consumer is the manner in which the price is to be calculated.

**Example:** when total price depends on the actual consumption, you need to indicate the price per kilo/litre, for example.

4. All of the arrangements, if any, for **payment, delivery, performance**, time by which you undertake to deliver the goods or to perform the service, and your **complaint handling policy**.

**Example:** inform the consumer that the product is delivered through a particular carrier and that the delivery will be executed within 15 working days. Also inform him about what he needs to do in case he wants to complain and how to submit his complaint.

5. The existence of a **legal guarantee** of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees. Under EU law, a difference is to be made between the legal (or statutory) guarantee and the commercial guarantee. The legal guarantee is a mandatory by law, i.e. the Directive 1999/44/EC on

<sup>16</sup> See Article 3(4) of the Consumer Rights Regulation - <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&it emid=25850&l=1>

sales of consumer goods as implemented in the national laws of the EU Member States. In the EU, the legal guarantee for consumer products lasts for a period of at least two years and offers remedies, free of charge, for any fault in a good which already existed at the time of its delivery. The commercial guarantee adds to the legal guarantee and is granted by either the seller or the producer, either free of charge or against payment.

**Example:** a commercial guarantee that offers remedies in relation to the functioning of an iron for 5 years, rather than just for the 2 years covered by the legal guarantee and covering more than just the defects existing at the time of delivery. The trader has the obligation to make the existence of the legal guarantee visible. In case you offer an after-sales service, you must inform the consumer about its existence and modalities for benefitting from it<sup>17</sup>. In this context, please be aware that, under the Consumer Rights Directive, the costs of a customer call-centre can never be higher than the costs of a local phone-call, if the call is related to a question on an existing contract.

#### 6. The **duration** of the contract.

**Example:** If you are the owner of a local gym, you need to clarify whether the subscription contract has a determinate duration or not, and whether it is automatically extended or not. For example, if you require that the consumer gives a prior 15-day notice to cancel the contract, he needs to be informed about this notice period before concluding the contract.

7. The **functionality**, including applicable technical protection measures, **of digital content**, if any. This means that you need to fully explain to the consumer how the digital content works in practice. In particular, this refers to the presence or absence of any technical restrictions.

**Example:** indicate whether a particular PC software you are selling in your shop can be used offline and/or online; indicate whether the usage of the software is restricted only to one country.

8. The **interoperability of digital content** with hardware and software, if any.

**Example:** inform the consumer that the digital content you offer can only be used for Macintosh operating systems on Apple computers only.

Beware that, since most of these "on-premises" transactions are of a domestic nature, the Consumer Rights Directive allows all EU Member States to introduce, under national law, additional pre-contractual requirements to the above list. Hence, if you wish to open your shops in other Member States, you should get familiar with possible additional information requirements applicable there.

While some elements are explained below, ANNEX 1 will provide you with an overview of the regulatory choices made by each Member States<sup>18</sup>

### **Additional pre-contractual information requirements by Member States.**

In Malta's case, all the pre-contractual information for on premises contracts can be seen in Article 4 of Legal Notice 439 of 2013 entitled Consumer Rights

under Article 29 of Directive 2011/83/EC on Consumer Rights. See [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/transposition\\_list\\_crd\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/transposition_list_crd_en.htm)

<sup>17</sup> See Module 3 on consumer sales which describes the remedies the trader must provide for defective goods.

<sup>18</sup> Alternatively, you can also refer to the actual notifications submitted by Member States on the use of regulatory choices

Regulations, 2013

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25850&l=1>

## Which information requirements apply to consumer contracts concluded at a distance or outside your business premises?

The Consumer Rights Directive has fully harmonised the list of pre-contractual information you have to give to your consumers if you operate at a distance (e.g. online or via telephone) and/or if you conclude contracts "off-premises", such as at the consumer's doorstep. This means that, for these commercial channels, Member States may no longer add pre-contractual requirements to the list laid down in the Directive.

This list entails all the 8 key information requirements which you need to provide if you operate through shops, plus a few more items, many of which apply only if and where applicable, depending on the nature of the transaction at stake and the fact that for (most of) distance and off-premises contracts consumers enjoy, across the EU, a 14 days' right to withdraw<sup>19</sup>. Compliance with these fully harmonised pre-contractual information requirements facilitates access to the consumers of all MS. Here is the list of the additional items, on top of the previous 8 ones:

1. On top of disclosing your identity and your geographical place of establishment, whenever you operate at a distance or outside business premises you must make sure you provide a phone number and an e-mail to allow your consumer to

communicate with you quickly and efficiently. If you are acting on behalf of another trader, you must provide also his geographical address and identity.

2. Only if different from the place of establishment, you must also indicate the address, including that of the trader on whose behalf you are acting, where the consumer can send any complaints.
3. Only if different from the costs of a local phone call ('basic rate'), you must also inform the consumer about the cost of using the means of distance communication for concluding the contract. Once the contract is concluded, beware that, under the Consumer Rights Directive, the cost for a hotline answering consumer queries in relation to their contracts can never exceed the basic rate.
4. Only if you adhere to a code of conduct, you must also inform the consumer about its existence and how copies thereof can be obtained.

**Example:** disclose that you are part of the ICC Code on Advertising and Marketing Communication Practice and add a link thereto.

5. Only if your contract foresees that the consumer must be bound for a minimum duration of time, you must inform the consumer in advance about the length of such time-period.

**Example:** you need to inform the consumers about the minimum number of months they must stay affiliated with your gym club to be able to benefit from the offered price for yearly subscriptions.

6. Only if your contract requires the consumer to pay or provide a deposit or another financial guarantee, you must inform the consumer in advance about its

<sup>19</sup> See Module 2 on the consumer right to withdraw from distance and off-premises contracts.

conditions and modalities.

**Example:** you need to inform your consumers in advance if they have to provide an advance deposit for the hotel they have booked from you online, and inform them under which conditions they can possibly get it back.

7. Whenever applicable, you must also inform the consumers about the possibility of using out-of-court complaint and redress mechanisms to solve any dispute the consumer may have with you. This can be done, for example, thanks to the online dispute resolution (ODR) Platform, which is a tool that helps consumers to submit their complaint to a specific alternative dispute resolution (ADR) entity<sup>20</sup>.
8. Finally, if no or a limited right of withdrawal applies to the specific kind of contract at stake<sup>21</sup>, you must inform your consumer about this fact and/or about the circumstances under which he/she loses this right of withdrawal. If, on the contrary, the contract is covered by a right of withdrawal, you must inform your consumer about:
  - a) the conditions, time limit and procedures for exercising that right in accordance with the model form set out by the law<sup>22</sup>;
  - b) the fact that he/she will have to bear the cost of returning the goods in case of withdrawal and, in case the goods cannot, by their nature, normally be returned by post, the cost of returning the goods.

**Example:** if the consumer has bought from you a fridge or a washing machine (items which are typically delivered door-to-door rather than handed in for dispatch at a post office), you

must specify to the consumer one carrier (for instance the one assigned to deliver the good) and one price for returning the goods, or at least a reasonable estimation of the maximum cost, possibly based on the cost of delivery<sup>23</sup>; **and**

- c) the fact that, if the consumer exercises the right of withdrawal after having made an explicit request, during the withdrawal period, to start the performance of service, he/she shall be liable to pay you the proportionate cost for the services you have in the meantime provided.

**Example:** if the consumer concludes with you a contract for mobile telephone services, you must inform him/her that, if he/she expressly requires the services to immediately start but then decides, e.g. 10 days after signature of the contract, to withdraw from it, he/she would have to pay you one third of the monthly subscription plus the price of any additional services received till then.

**Importantly, in certain cases the information duty has been simplified.** Distance communication sometimes provides only a limited space or time to display the information. In such cases, you have to provide the most important information, prior to the conclusion of the contract, i.e.:

1. your identity
2. the main characteristics of the product you offer
3. its total price
4. information about how to use the right of withdrawal

([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)) for more details.

<sup>22</sup> For more details, see Module 2.

<sup>23</sup> See [DG JUST Guidance on the Consumer Rights Directive](#), chapter 6.2

<sup>20</sup> For more details, see Module 5.

<sup>21</sup> Article 16 of the Consumer Rights Directive lists the type of contracts for which no right to withdraw exists. Please see Module 2 on the right of withdrawal and the [DG JUST Guidance on the Consumer Rights Directive](#)

5. the duration of the contract or, if it is of indeterminate duration, the conditions for terminating it.

However, all of the remaining information requirements have to be provided in an appropriate manner (e.g. on a PDF document subsequent to the actual purchase order).

Moreover, in case of an on-line contract, the trader must, before the consumer places an order and accepts to pay, make the consumer fully aware in a prominent manner, directly before the consumer places his/her order, of the following issues:

1. what are the main characteristics of the product;
2. which is its total price;
3. what is the duration of the contract or, if the contract is of indeterminate duration, which are the conditions for terminating it;
4. if the contract foresees that the consumer must be bound for a minimum duration of time, what is the length of such time-period.

The trader has to ensure that the consumer, when placing his order online, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the button or similar function has to be labelled in an easily legible manner only with the words 'pay now', 'buy now', 'confirm purchase', 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

Art. 7(4) on simplified information requirements has been used by Ireland, Lithuania, The Netherlands, Portugal, Slovenia, Slovakia and Spain but not in other EU Member States. In Belgium, this possibility has

been retained but has not yet been used<sup>24</sup> (see ANNEX 1 as well for more information).

## How do you have to present pre-contractual and contractual information?

The text providing the required information should always be easy to read and understand for an average consumer. The information provided needs to be given in a clear, legible and comprehensible manner.

### What does it mean in practical terms?

The assessment as to whether information has been provided in the correct manner is always to be carried out on a case-by-case basis. Here are however some practical tips to increase your chances of complying:

- use a font type that is easy to read and of a sufficiently large size (e.g. font size comparable to a 12 Times New Roman font)
- make sure that letters appear clearly on the background color (e.g. black on white; e.g. not bright yellow on white)
- put sufficient space between the sentences and the paragraphs
- draft in a clear language

## Simple Solution

If you have any doubt on the clarity of your information, ask some person in your vicinity (family, friends, colleagues, etc.) to give you their honest opinion on whether they find it clear, legible and comprehensible.

<sup>24</sup> [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/transposition\\_list\\_crd\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/transposition_list_crd_en.htm)



Not Allowed	Allowed
<p>“You have two years legal guarantee period”</p>	<p>“Our address is Athens Road 21, 1000 Limassol, Cyprus”</p>
<p>“In case of any dispute, French law will apply”</p>	<p>“You have 14 (fourteen) days as of the conclusion of the contract to freely return the product you have bought”</p>
<p><u><a href="mailto:youmayaddresssthecomplainttocomplaints@mail.es">youmayaddresssthecomplainttocomplaints@mail.es</a></u></p>	<p>“For any product you buy from us, you have a two-year statutory guarantee during which you may use a number of remedies in case your product turns out not to be in conformity with the contract”</p>
<p>本書分兩大部份，第一部份詳述作者於一九三八年考取政府獎學金入讀香港大學，並因此在中國內地先後為英國海軍情報局及中國國民黨軍隊工作。戰後憑勝利獎學金</p>	

## In what language does this pre-contractual and contractual information need to be presented?

Each Member State may choose to define the language in which the information has to be disclosed to the consumer. As described in Annex 1, more than half of all Member States have made use of this regulatory choice (Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Italy, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain) In most cases, it is the official language(s) of the Member State.

In Malta's case the national legislation specifies that at least one of the country's official languages has to be used namely Maltese or English.

This is very important. Indeed, if you provide the information in another language than the required one, it is considered that the information was not provided at all. In order to check what language each Member State has chosen, please have a look at ANNEX 1.

## In case of contracts negotiated outside of business premises, is it sufficient that I tell the consumer orally all these pieces of information?

In case of contracts negotiated outside of business premises, providing the information orally to the consumer is not sufficient. The information needs to be provided on paper.

The information may also be provided on another durable medium if the consumer has agreed to that. In

order to be on the safe side, always keep a proof in writing that the consumer has agreed that the information is provided on a durable medium other than a piece of paper. Other durable mediums include for instance an email, a USB stick or a photo, i.e. mediums whose content cannot be unilaterally altered by the trader and which the consumer can store. It is important to provide this information on a durable medium so that the consumer can access the information in the future.



If you do not provide the information in the way as required by the law, this will have the same effects as if you had not provided the information at all<sup>25</sup>.

## Do I need to present this pre-contractual and contractual information in different manners, depending on who are my target consumers?

EU law requires you to always act with professional diligence and to exert a special degree of care if you present your products and services to groups of consumers who may be particularly vulnerable because of their age or disability.

<sup>25</sup> See chapter on " What are the consequences if I do not provide the pre-contractual information requirements "

If you specifically target vulnerable consumer groups, you should always adapt the methods in which you provide the information to their particularities. For example, the font size of the information provided to the consumer needs to be adjusted to the needs of an elderly person. The information has to be very clear, comprehensible and accessible.

Likewise, in the case of a visually impaired consumer, the information should be provided by the usage of appropriate media and symbols.

Failure to exert the appropriate degree of professional diligence when dealing with such special consumers may amount to an unfair commercial practice<sup>26</sup>

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

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

Under EU law<sup>27</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 by making use of the regulatory option 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 (see Annex I). 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 explicitly direct 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>28</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

<sup>26</sup> For more details, see Module 4 on unfair commercial practices and unfair contract terms.

<sup>27</sup> Notably the so called "Rome I" Regulation 593/2008.

<sup>28</sup> For more information, see joined cases C 585/08 and C 144/09 Peter Pammer and Hotel Alpenhof GesmbH the Court

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 Member 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.
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.

In this module, we have underlined several points on which Member States have adopted rules that differ from those laid down in the Consumer Rights Directive

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<sup>29</sup> Notifications of Member States: [http://ec.europa.eu/consumers/consumer\\_rights/rights-contracts/directive/transposition\\_list\\_crd\\_en.htm](http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/transposition_list_crd_en.htm); Summary: [http://ec.europa.eu/justice/consumer-marketing/files/overview\\_regulatory\\_choices.pdf](http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf)

concerning pre-contractual information. You can find the information in annex or on the website of the European Commission<sup>29</sup>. If you want to check how the individual EU countries have transposed the Consumer Rights Directive, you can also use the European Commission's new [Consumer Law Database](#)<sup>30</sup>. In the case of Malta, the directive was transposed via the Consumer Rights Regulations of 2013<sup>31</sup>.

## 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>32</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.

<sup>30</sup> See Consumer Law Database: <https://e-justice.europa.eu/home.do>

<sup>31</sup> <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25850&l=1>

<sup>32</sup> See Module 5 of this handbook

## What are the consequences if I do not provide the pre-contractual information requirements?

There are different consequences if you do not provide the pre-contractual information requirements.

First of all, you run the risk of disappointing your consumers and damage to your reputation.

Secondly, the law itself provides a number of important immediate consequences if certain pre-contractual information requirements were not respected. For instance, if you fail to inform consumers about their 14-day right of withdrawal, this right is automatically extended to one calendar year.

Finally, you would run the risk of having to pay a monetary fine under national law for your breach of the Consumer Rights Directive.

There are also various contractual and non-contractual remedies that the consumer has the right to ask for. For instance, the consumer may ask for contract termination and/or compensation for the damages that have occurred to him as a result of the missing information.

It might be useful to learn what remedies national courts apply, especially when you operate on market(s) outside your own country.

# Annexes

## Annex 1 - Application of the CRD regulatory choices by Member States

Despite the Directive being a full harmonisation Directive, there are a number of regulatory options available to the Member States on its implementation following the principles of subsidiarity and allowing some flexibility. The following articles of the Consumer Rights Directive offer a regulatory choice:

- Article 3 (4) – not to apply the provisions to off-premises contracts if the payment to be made by the consumer does not exceed 50 euros;
- Article 6 (7) – to impose language requirements regarding the contractual information for distance and off-premises contracts;
- Article 6 (8) – to impose additional information requirements in accordance with Directive 2006/123/EC and Directive 2000/31/EC regarding distance and off premises contracts;
- Article 7 (4) – not to apply a simplified information regime for off-premises contracts to carry out repairs or maintenance;
- Article 8 (6) – to introduce specific formal requirements for contracts concluded by telephone; and
- Article 9 (3) – to maintain, in the case of off-premises contracts, existing national legislation prohibiting the trader from collecting payment from the consumer during a given period after the conclusion of the contract.

The following tables set out the regulatory options that have been adopted by Member States (source: Study on the application of the

Consumer Rights Directive - 2011/83/EU - Final Report [http://ec.europa.eu/newsroom/document.cfm?doc\\_id=44637](http://ec.europa.eu/newsroom/document.cfm?doc_id=44637))

Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
Austria (AT)	Yes; limit 50 EUR	Not used	Not used	Not used	Yes; only for services contracts	Not used
Belgium (BE)	Yes, 50 EUR but only for contracts with humanitarian purpose	Not used	Not used	Possibility retained but not yet used <sup>25</sup>	Possibility retained but not yet used <sup>25</sup>	Yes, 7 days, but does not apply to off-premises contracts concluded in shows, fairs and exhibitions
Bulgaria (BG)	Not used	Yes	Not used	Not used	Yes	Not used
Croatia (HR)	Not used	Yes	Not used	Not used	Not used	Not used
Cyprus (CY)	Yes; limit of €20	Yes	Yes	Not used	Yes	Not used
Czech Republic (CZ)	Not used	Yes	Not used	Not used	Not used	Not used
Denmark (DK)	Yes, limit 350 DKK (46 EUR)	Yes; Danish, if marketing done in Danish	Not used	Not used	Not used	Not used
Estonia (EE)	Yes, limit is €20	Yes	Not used	Not used	Yes. Article applies only when the professional calls the consumer	Not used
Finland (FI)	Yes <sup>26</sup>	Not used	Not used	Not used	Not used	Not used
France (FR)	Not used	Yes	Not used	Not used	Yes. Article applies only when a sales	Yes -7 days

<sup>25</sup> The unofficial translation notes that Belgium has made use of this option but it is the King who has the possibility of introducing a lighter arrangement for providing information. Similarly under Art 8, it is the King who has the possibility of designating sectors to which the requirement will apply. It is uncertain whether it has been used.

<sup>26</sup> According to a consultation his is €30.



Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
					professional calls the consumer <sup>27</sup>	
Germany (DE)	Yes, limit is €40	Not used	Not used	Not used	Not used but there was a prior legislative requirements of this kind for certain sectors	Not used
Greece (EL)	Yes, limit is €30	Not used	Not used <sup>28</sup>	Not used	Yes	Yes - during the withdrawal period
Hungary (HU)	Not used	Not used	Yes <sup>29</sup>	Not used	Not used	Not used
Ireland (IE)	Yes, limit is €50	Not used	Not used	Yes	Not used	Not used
Italy (IT)	Yes, limit is €50	Yes, if the consumer requests it	Not used	Not used	Yes	No. No promissory note with a due date less than 15 days after delivery of goods
Latvia (LV)	Yes, limit is €35	Not used	Not used	Not used	Not used	Not used
Lithuania (LT)	Yes, less than 100 LTL (approx. €29)	Yes	Not used	Yes	Yes	Not used
Luxembourg (LU)	Yes, limit is €50	Not used	Not used	Not used	Yes	Not used
Malta (MT)	Yes. Limit is 30 €	Yes, either official language is required	Not used	Not used	Yes	Yes, deposit can only be collected 14 days after the conclusion of the

<sup>27</sup> Section 5, Article L221-16 of the French consumer code stipulates that it is illegal to conclude contract through an unknown telephone number (blocked number) - Article L221-17.

<sup>28</sup> Greece have transposed the text of Art 6(8) of the Directive (almost word-by-word) in the form of Article 3(7) of their Law 2251/1994 (as amended) but they have not introduced any concrete additional information requirements. Interviews have confirmed that no real action has been taken in this area.

<sup>29</sup> It has laid down additional requirements on the provision of information on warranties and guarantees, right to conciliation and information on electronic correspondence. The unofficial translation is available at: [http://ec.europa.eu/justice/consumer-marketing/files/hu\\_reg\\_choices\\_art\\_29\\_en\\_version.pdf](http://ec.europa.eu/justice/consumer-marketing/files/hu_reg_choices_art_29_en_version.pdf)

Country	Article 3(4)	Article 6(7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9(3)
						Contract
the Netherlands (NL)	Yes, limit is €50	Not used	Not used	Yes	Yes (limited application)	Not used
Poland (PL)	Yes, limit is 50 PLN. [approx. €12]	Yes	Not used	Not used	Yes. Article applies only when the sales professional calls the consumer	Not used
Portugal (PT)	Yes, but only to subscription of periodical items for a limit of €40	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls the consumer	Not used
Romania (RO)	Yes, limit is €50	Yes	Not used	Not used	Yes	Not used
Slovakia (SK)	Not used	Not used	Not used	Yes	Yes	Yes - until the end of the withdrawal period
Slovenia (SI)	Yes, limit is €20	Yes	Not used	Yes	Yes	Not used
Spain (ES)	Not used	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls the consumer	Not used
Sweden (SE)	Yes, limit is €43 <sup>30</sup>	Not used	Not used	Not used	Not used	Not used
The UK (UK)	Partial exemption: off-premises < €50 exempt from certain information and Right of withdrawal	Not used	Yes, in part - for energy providers and estate agents	Not used	Not used	Not used

<sup>30</sup> The amount is 400SEK.

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