



SPECIAL NOTICE

**Key recommendations for SMEs in the
COVID-19 context**



The Covid-19 pandemic is still raging on and is putting pressure on businesses in unprecedented ways in recent history. A majority of countries in the European Union have imposed lockdowns, disrupting day-to-day business.

Overnight, certain sectors saw the demand for their services and products crumble, either because physical shops had to close or other measures put in place to contain the pandemic made it impossible to offer certain services. Almost all businesses were faced with declining turnovers resulting in lower profit.

Several businesses have luckily found some relief by reinventing the channels through which they reach their consumers. For better or worse, the online environment has become even more important today.

In such a context of economic turmoil, consumer law remains applicable, and businesses are expected to comply with the regulatory framework. For the companies that have changed their offer or their ways of advertising, it is therefore important not to overlook this important aspect and to refresh, if necessary, their knowledge about the obligations, but also rights, they have when entering into a commercial transaction with their customers.

The goal of this short notice is to raise businesses' attention about the continued relevance of consumer law in these difficult times. Consumer Law Ready offers an extensive overview in five modules, dedicated to explaining the consumer protection legal framework in which businesses operate.

In this notice, we briefly outline where traders who have adapted their offer during the pandemic can find relevant information on their questions. We do that by short summaries and highlights of the Consumer Law ready modules and relevant consumer law legislation.

Pre-contractual information requirements

The Consumer Rights Directive ("CRD") requires you, as a trader, to comply with a set of mandatory pre-contractual information requirements to consumers before the conclusion of a contract. This concerns, among other aspects, conditions relating to payments and the delivery of goods.

Of particular importance in these times for businesses who **started offering their services online (or by phone)**, are the information requirements applicable for sales concluded at a distance (such as online or by phone). These requirements are the same all over the European Union. For instance, one of the requirements is that you need to provide a phone number and an e-mail address to allow consumers to communicate quickly and efficiently with you.

[For more information, check Consumer Law Ready Module 1 - Pre-contractual information requirements¹.](#)

Transparency is of course always encouraged, and should you expect **delays** in deliveries because of overwhelmed postal services or disrupted production, you are advised to inform your consumers about it to avoid potential disputes. Alternatively, if postal services that you usually use are interrupted, think about offering your customers alternative delivery solutions. If these are subject to a charge and require an additional cost for the consumer, be aware that the consumer must be informed of the additional delivery costs before the conclusion of the contract and must be free to accept or not these alternatives. Under certain conditions², consumers also have the right to terminate the contract if the delivery dates are not met. This is the case, when you do not deliver even within an additional period agreed with the consumer. Or when the

¹ consumerlawready.eu/SME/module/1

² CRD, Article 18

originally agreed delivery date is essential and the consumer made you aware of this (e.g. wedding dress).

If you operate a phone line for your sales, do not forget that you must inform the consumer in advance about the cost of using this means of communication for concluding the contract where the cost is higher than the basic rate. After the contract is concluded, keep in mind that if consumers need to contact you by phone (or if you decided to create a helpline for consumers), they should not be bound to pay more than the basic rate for calling a hotline with queries in relation to their contracts.

Right of withdrawal

Under the CRD³, consumers have a **right to withdraw** from online sales (and other distance contracts) within 14 days from reception of a good, or 14 from the day of the conclusion of the contract for a service contract. The crisis did not change this consumer right.

For consumers too, it might be more difficult in a COVID-19 context to exercise their right within the legal period of 14 days. However, the rules stand and if you want to offer extra customer service, you can offer an extension of the 14-day period or, if you offered to collect the goods yourself, you can propose alternative collection solutions. However, you are not legally obliged to offer any of these additional services.

[Have a look at Consumer Law Ready Module 2 – Right of withdrawal⁴.](#)

³ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance

⁴ consumerlawready.eu/SME/module/2

Consumer rights and guarantees

Other aspects of consumer law that are good to keep in mind relate to guarantees. The COVID-19 pandemic has led to a paralysis of the economy and may prevent, for instance, consumers from asserting their rights arising from the legal or commercial guarantees within the required deadlines (i.e. returning the goods within a specific deadline to a specific place for replacement/repair). An alternative solution, on a case-by-case basis, could be to suspend the expiry of your commercial guarantees during a specific period, for instance, equivalent to the period of the state of emergency. You are, however, not legally obliged to do that.

Under the Consumer Sales and Guarantees Directive⁵, if the **product you delivered is not in conformity** with what was set out in the contract, consumers can ask for the goods to be repaired, replaced, and reduced in price or for the contract to be terminated. Please note that the Member States can give additional protection to consumers, e.g. the possibility to choose the type of remedy. You need to check the national legislation of the Member States to which you are directing your activity to make sure that you respect consumers' rights on guarantees.

These rules are still applicable now and did not undergo any changes due to COVID measures.

Please note that from 1 January 2022, under the new Directive on the Sale of Goods, consumer remedies for non-conformity will be fully harmonized meaning the same rules will apply in all EU Member States.

⁵ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

[More detailed information can be found in Consumer Law Ready Module 3 – Consumer Rights and Guarantees⁶.](#)

Unfair Commercial practices and unfair contract terms

Exceptional times never warrant any form of deceiving actions, also not in COVID-19 times.

The Unfair Commercial Practices Directive⁷ protects consumers from unfair practices before, during and after any commercial transaction. There is a list of 31 blacklisted practices including both online and offline behaviours that will always be considered unlawful and are always prohibited. For instance, it may be that due to disrupted delivery chains with your own suppliers you may not have certain products in stock for a while, then you should be particularly careful of making certain claims to consumers. You do not want to be accused of “bait advertising” if you realise too late that you cannot deliver on your advertisement claims!

[For more information, check Consumer Law Ready Module 4 - Unfair Commercial Practices and Unfair Contract Terms⁸.](#)

Alternative Dispute Resolution (ADR) & Online Dispute Resolution (ODR)

In case you get entangled in a dispute with a consumer, the usual channels to resolve them are still at your disposal.

⁶ consumerlawready.eu/SME/module/3

⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

⁸ consumerlawready.eu/SME/module/4

These times marked by disruption and confusion can sometimes lead to a lack of understanding and miscommunication between traders and consumers. This can obviously lead to a lot of frustration on both sides. To avoid litigation, and to respond quickly to the various questions of your consumers, the best solution is to try to look for an amicable settlement. Bigger enterprises may be able to create FAQs, that however should be checked by a legal expert. You may also look into the feasibility of setting up a helpline, an online complaint form, or interactive chats through which you can communicate with consumers to answer their questions as soon as possible.

If a dispute arises that you cannot resolve bilaterally, consumers can complain to a consumer alternative dispute resolution (ADR) Body.

Consumer ADR schemes are impartial, easy-to-access, affordable, and transparent solutions to resolve consumer disputes out of court. The outcome would take 90 days or less, except in very complex cases. These bodies have been certified by national competent authorities, which also assess their activities on a regular basis. The list of ADR bodies in the EU, Liechtenstein, Norway and Iceland that satisfy the quality requirements of the ADR directive⁹ is found [here](#)¹⁰.

Do not hesitate to use them to resolve disputes with your consumers. ADR bodies may help you maintain a good business reputation and a lasting relationship with the consumer.

ADR schemes in the EU are very diverse, as the EU legal framework allows Member States to be flexible in terms of set-up and functioning of these bodies, as long as minimum quality requirements are met, and the system is effective. Do not forget that certain Member

⁹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

¹⁰ ec.europa.eu/consumers/odr/main/?event=main.adr.show2

States require traders to adhere to an ADR body of their choice.

Traders may also be bound to participate in ADR procedures by way of their membership in business associations. If you are neither required nor bound to adhere to an ADR procedure you may do so on a voluntary basis. Traders who are obliged to use ADR or are affiliated with an ADR scheme should inform consumers of this possibility. If you have a website, it should include clear, comprehensive and easily accessible information on your ADR scheme (including the address and website of the ADR entity or entities). The same should be included in your Terms and Conditions.

To solve consumer disputes over products or services you sell online (including via online marketplaces or social media), you may also use the European Online Dispute Resolution ODR Platform, provided by the European Commission¹¹. The ODR platform facilitates the communication between traders, consumers, through ADR bodies and is fully available in 25 languages.

If you are a trader operating online, do not forget that you must include a link to the European ODR Platform on your website in a clearly and easily accessible manner for consumers. You must also provide your email address.

Note that ADR procedures are not designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts.

[For more information on Alternative Dispute Resolution \(ADR\) schemes and on the Online Dispute Resolution \(ODR\) platform, please consult Module 5¹²!](#)

¹¹ ec.europa.eu/consumers/odr/main/?event=main.complaints.screeningphase

¹² consumerlawready.eu/SME/module/5

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

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

Are you Consumer Law Ready? Further general information and materials can be downloaded at consumerlawready.eu or contact info@consumerlawready.eu



Consumer Law Training for European SMEs